# PRELIMINARY COUNTRY PAPER
# OF
# ETHIOPIA
# ON
# COMPETITION REGIME: CAPACITY BUILDING ON COMPETITION POLICY IN SELECT COUNTRIES OF EASTERN AND SOUTHERN AFRICA
# (7UP 3 PROJECT)

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## I. General Background

Ethiopia is one of the oldest independent countries in the world - at least 2,000 years old, and has historical origins as the empire of Ethiopia, founded according to legend by *Menlik* I, son of King Solomon and Queen Sheba.

### 1.1 Geographical Location on the Globe

The current Federal Democratic Republic of Ethiopia (FDRE), with Addis Ababa its capital city, is located on 3' N and 14' 8" N Latitude and 33' E and 48' N Longitude, in the Horn of Africa, eastern part of the continent. Ethiopia as a land locked country, shares borders with Sudan in the west and North-west, Kenya in the south, Somalia in the east and southeast, Eritrea in the North and Djibouti in the east. Ethiopia holds a total area of 1.14 million square kilometers (423,828 square miles).

### 1.2 Size and present population

According to the July 2004 estimation, Ethiopia has a population of 71 million, out of which 35.66 million (50.22%) are female leaving the balance 35.34 million (49.78) for male. Overall productive population is estimated at 35.6 million. With an annual population growth rate of about 2.7 percent, Ethiopia is the third most populous country in Africa, after Nigeria and Egypt.

### 1.3 Present GDP

According to 2003 estimations, total GDP at Current Market Price was 54,585.9 Million Birr, while in terms purchasing power parity it was $ 46.81 billion, with real growth rate of -3.8%. Although GDP per capita is roughly about $100, the GDP Per Capita, PPP is $ 700. Agriculture contributes 46% of GDP, while service and industry contribute 12.6% and 41.4% respectively.

### 1.4 Present literacy rate:

Out of total population (71 million), about 42.7% are literate (can read and write). In terms of gender aggregation, 53.3% of male and 35.1% of female are literate.

### 1.5 Present unemployment rate:

Although actual number of unemployed is not available, unemployment manifests itself mainly in the form of underemployment. Open unemployment is concentrated in urban areas. Youth unemployment has been a major social problem.

### 1.6 Brief analysis of Socio-politico-economic history:

Ethiopia's economy is based on agriculture, which accounts for half of GDP, 60% of exports, and 80-85% of employment. The immature market economy, which had been started during imperial period, was halted during the command economy of the military regime. Since the current government took power in 1991, Ethiopia pursued a market-oriented development strategy and implemented policies that began the shift from a state-controlled to a free market economy. The government has embarked on a cautious program of economic reform, including trade liberalization, privatization of public enterprises and streamlining the bureaucracy. Ethiopia's reform program has achieved some success in stabilizing the economy and aiding the transition to a free market system.

The country's development strategy has focused on agricultural development as the catalyst for economic growth. It has eliminated discriminatory tax, credit, and foreign trade treatment of the private sector and tried to simplify bureaucratic regulations and procedures. From 1998-2002, the country achieved an annual average economic growth rate of about 4.2% and annual inflation rate averaged – 0.4%. In FY 2002/03, GDP fell by 3.8 percent and inflation rose by 15.1 percent, mainly due to decline in agricultural output by 12.2 percent caused by a severe drought. Agricultural output had recovered somewhat during the 2003/04-crop year due to more normal rains. The Government of Ethiopia and IMF estimated that the economy has registered a growth rate of 11.6% and the agricultural sector 18.9% in FY 2003/04.

The Government acknowledges the importance of private sector and claims to have been trying to further widen the participation of the latter. However, there are many complaints from the private sector that party-owned enterprises are dominating the market and negatively affecting the competition regime.

### 1.7 Trade Balance:[2]

Because of the need to import large quantities of food and lack of highvalue exports such as minerals or petroleum, annual deficits in the merchandise trade account have exceeded US$1 billion since the late 1990s. The deficit for 2002–3, the latest year for which figures from the National Bank of Ethiopia are available, was estimated at US$1.5 billion.

## II. Social and Economic Policies Affecting Competition

A country's social and/or economic policies may affect market competition either positively or negatively. To see this, some eight policies namely, industrial policy, trade policy, regulatory policy, investment policy, government procurement policy, labor policy, development policy, and policy for small and medium size enterprises will be seen in brief.

### 2.1 Industrial Policy

The Industry policy of the country is generated from the Industrial Development Strategy, which has been in place since August 2001, within the framework of the world environment and the free market economy. The key principles of the strategy are:

- Recognizing the role that can be played by the private sector as an engine of industrial development. Hence, identifying and removing obstacles that hamper the role of the private sector is claimed to have caught due attention of the Government;
- Following the direction of ADLI (Agricultural Development Led Industrialisation) strategy, which focuses on ensuring rapid industrial development that produces inputs and consumption goods that are suitable for the agricultural sector, and on adding value to agricultural products, which in turn is believed to guarantee backward and forward linkages between agriculture and industry;

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[2] *Incorporated in accordance with the comment forwarded during the First National Reference Group Meeting.*

- Owing to Export Led Industrialization, the rapid growth of export production is believed to lead the way to the growth of other concomitant sectors, with the additional benefits of quality improvement;
- Focusing on labour-intensive industries;
- Using co-ordinated foreign and domestic investment; and
- Coordination between government and the private sector.

Hence, for the time being, no appreciable adverse impact is observed or otherwise expected from the industrial policy against competition and competitiveness.

### 2.2 Trade Policy

During the Imperial and Military regimes, the country's trade regime had been guided by **Commercial Code (1960),** Law governing company formation, operation, dissolution, etc. The new trade policy has been in place since 1991. Indeed, since the beginning of the 1990s, Ethiopia has been making significant progress toward opening up its economy and has notably improved its trade policy regime[3]. More specifically, the implemented trade reforms[4] resulted in a significant cut in import tariff rates, a reduction of the tariff dispersion and a decrease in the level of applied rates. At present, the country's trade protection system includes no quotas; no tariff rate quotas and no seasonal tariffs, while most of quantitative restrictions have been eliminated. Never the less, they are officially applied only to used clothes for security and safety reasons. On the other hand, according to certain sources, the Ministry of Trade and Industry also imposes restrictions on importation of some products that compete with locally produced goods, particularly in the agricultural sector, while motor vehicle imports require approval from the Ministry of Transport and Communications.[5]

More importantly, despite considerable improvements towards liberalising its external trade and easing its participation in the global economy, Ethiopia's trade policy contains at least two constraints that hamper its international trade. These restrictions are a) rules for the issue of import permits; and b) the requirement to provide a clearance certificate from the National Bank of Ethiopia (NBE) to obtain import permits.[6]

### 2.3 Regulatory Policy

Previously, government procedures and paper works are usually complicated and time-consuming; regulations have been too bureaucratic, impartial and inflexible. However, following the 1996 comprehensive civil service reform program, measures are being taken especially since 2003, on business licensing, import-export regulations, foreign exchange regulations, and others have been relatively simplified, brought down to one-stop-shop approaches and as a result, some improvements are

[3] *Subramanian A. et al. ( 2002), Trade and Trade Policies in Eastern and Southern Africa, IMF.*

[4] *Proclamation No. 67/1997**:** Commercial Registration and Business Licensing Proclamation; Regulation No. 13/1997: Federal Government Commercial Registration and Licensing Regulation; Proclamation No. 123/1995: Concerning Inventions, Minor inventions and Industrial Designs; Council of Ministers Regulation No. 12/1997: Inventions, Minor Inventions and Industrial Designs Regulation; Proclamation 49/2001: A Proclamation to Provide for the Establishment of Export Trade Incentive Scheme; Proclamation No. 329/2003: Trade Practice Proclamation*

[5] *U.S. Foreign Commercial Service and U.S. Department of State (2004), Ethiopia Country Commercial Guide FY 2004.*

[6] *See OECD (2004), African Economic Outlook, Ethiopia 2004.*

registered in 2003/04. This in its turn is believed to result in easy entry and exit of commercial activities and fairer competition. However, still one cannot deny that much remains to be done.

## 2.4 Investment Policy:

It has been argued that Ethiopia's market-oriented economic development strategy embraces wide reforms, with inducements to both domestic and foreign private investments. Moreover, it has been argued that the private sector is encouraged to invest in almost all areas of economy including those sectors formerly reserved for the government, namely defense industries, hydropower generation, and telecommunications services. Like wise, Ethiopia does not impose local content, technology transfer or export performance requirements on foreign investments. There are no restrictions on repatriation of earnings, capital, fees or royalties.

However, in reality, investment in telecommunications and defense must be in partnership with the Ethiopian Government. Less proactive approaches towards these new orientations are being cited by the private sector as impediments to actively participate in the investment of efficient and profitable economic sectors; and has been one factor contributing to anti-competitive practices.

## 2.5 Government Procurement policies:

Government procurement is by competitive bidding. There are no burdensome administrative procedures or special document requirements. Currently there are efforts being made to make the procedures of public procurement more economic, efficient, fairer, transparent and non-discriminatory. This has been seen since the introduction of proclamation No 430/2005 on 12 January 2005, which provides for non-discrimination of candidates on the basis of nationality, race or any other criterion not having to do with their qualification (Art.18). However, the provision regarding open international bidding necessitates only when determinations of thresholds and issuance of directives by the Minister of Finance and Economic Development seems to be one of the limitations of the proclamation regarding competition. Lack of implementation mechanism of the proclamation, as it is too young, is believed to be another factor affecting competition. Previous public procurement systems have been complained to be discriminatory, unfair, anti-competitive and based on discretionally power of government officials.

## 2.6 Labor Policy:

The country's current labor policy has been based on labor proclamation No. 377/2003 which is in effect since 26 February 2004. Maintaining industrial peace and work by enabling both the workers and employers to be based on basic principles of rights and obligations, through harmony and cooperative efforts have been the major objectives of the policy. It has been argued that the proclamation is inconformity with international conventions and other legal commitments to which Ethiopia is a party. Abundance of cheap & disciplined labor force together with the introduction of revised labor proclamation is believed to positively contribute towards competition in the industry and other sectors.

### 2.7 Development Policy:

The country's over all economic development strategy has been based on Rural and Agriculture-Centered Development as a means of promoting development of market-oriented economy. Acknowledgement of export-development with objectives to create adequate markets so as to sustain growth of the agricultural sector, generate foreign exchange necessary for the overall economic development, and ensure promotion of internationally competitive industry seems to count positively towards competition in the country.

### 2.8 Policy for Small and Medium Size Enterprises (SMEs)

Small and Medium Enterprises are widely acknowledged to contribute towards promotion and development of inventions, minor inventions and industrial designs and thereby generate employment opportunities in the country. Efforts are being made and supports are being given to the sector. However, as the sector is limited to small enterprises like handicrafts, cottage industries, wood and metal works and the like, only local citizens are mostly handling them. When seen from domestic point of view the policy of this sector has not been adversely affecting competition.

### 2.9 Consumer Protection Policy:

Ethiopia has no such integrated Consumer Protection Policy. Consumer issues are being addressed in different regulatory regimes like the penal code, civil code and other specific regulations. Much more is to be none to see effective Consumer Protection Policy in the Country. Lack of such policy has been widely believed to have been adversely affecting attraction of foreign direct investment (FDI) and/or competition.

### 2.10 Any other Policies Affecting the Level of Competition in the Market

Many sectors, particularly in services and trade, are off-limits to foreign investors. The government retains control over the utilities sector and did not allow foreign participation in banking and insurance. Land cannot be purchased or sold, but leased. The commercial code is antiquated and the under-staffed judicial system is inadequate. Despite a relatively abundant unskilled labor force, shortage is observed in highly skilled professions and proficiency in the English language is not universal.

It has been argued that in the short-to-medium term, Ethiopia's economic performance will depend on its ability to continuously improve the business environment for the private sector, further liberalize the economy - particularly in the financial and telecommunications sectors - attract foreign direct investment, speed-up the privatization process, streamline the bureaucracy and maintain political stability. Other factors, such as favorable weather conditions, external market situations and consumer satisfaction will also play an important role over the coming years.

## III. Nature of Market/Competition

Here we try to show the categories of firms in Ethiopia based on the structure of the market in terms of firm/production, business type, cost/output and nature of competition[7].

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[7] *As elaborated in R.S. Khemani and D.M. Shapiro' s GLOSSARY OF INDUSTRIAL ORGANISATION ECONOMICS AND COMPETITION LAW, competition refers to a situation in a market in which firms or sellers independently strive for the patronage of buyers in order to*

Accordingly and as market structure is the term used to describe the way in which industry competitors interact, the analysis of market structures in Ethiopia include: perfectly competitive, monopolistic competition & monopoly. Now we try to locate firms in Ethiopia to these market structures.

### 3.1 The Nature of Competition in the Market

In Ethiopian market structure, producers and consumers face different environments. Some producers face a competitive or a monopolist market of inputs but selling their products in a market structure such as monopoly[8], imperfect competition or monopolistic competition or different degrees of oligopoly[9]; others can face monopsony[10] or oligopsony[11], combined with different structures in some inputs' markets. Any combination between sellers and buyers is possible. Some industries face homogeneous products that consumers can't distinguish; others face perfect substitute products but different at the consumers' point of view (For instance cases of electrical equipments, soft drinks, clothing, imported food items, and the like could be good examples).

### 3.2 Level of Competitiveness of Local Firms

A country's competitiveness in productivity depends mainly on micro factors like basic infrastructures (telecoms, transportation, power/water supply); and developed banking system, skilled manpower, vocational training, and effective governmental support for the private sector, better information/technological base and fair competition. However, the aforementioned factors and technology are the most costly to Ethiopia and difficult to obtain results and adversely affecting the country's competitiveness of local firms both in the national and international level.

Consequently, what are tradables in Ethiopia, namely unprocessed primary products, are quite different from what are tradables in other trading partner countries which produce sophisticated and manufactured products. So an increase in the world price of tradables (i.e. an increase in the weighted average of the wholesale price indices of these advanced trading partner countries) with respect to the domestic price of non-tradables does not show shift of resources to the production of tradables (primary products) in Ethiopian economy.

Ethiopia's manufacturing sector is still at a very early stage of development. Its share in GDP is less than 7% and its contribution to employment is similarly low,

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*achieve a particular business objective, e.g., profits, sales and/or market share. Competition in this context is often equated with rivalry between firms, which occurs when there are two or many firm, in terms of price, quality, service or combinations of these and other factors valued by the customers and/or consumers. From consumer perspective, competition is viewed as an important process by which firms are forced to become efficient and offer greater choice of products and services at lower prices. It gives rise to increased consumer welfare and efficiency in resource allocation.*

[8] *Monopoly is a situation where there is a single seller in the market, which is usually taken as the polar opposite of perfect competition. Comparison of monopoly and perfectly competitive outcomes reveals that the monopolist will set a higher price, produce a lower output and earn above normal profits (sometimes referred to as monopoly rents). This suggests that consumers will face a higher price, leading to a deadweight welfare loss. In addition, income will be transferred from consumers to the monopoly firm.*

[9] *An oligopoly is a market characterized by a small number of firms who realize they are interdependent in their pricing and output policies. As the number of firms is small enough to give each firm some market power, taking account of their interdependence is major issue in this market structure.*

[10] *A monopsony consists of a market with a single buyer; and when buyers have some influence over the price of their inputs they are said to have monopsony power.*

[11] *When there are only a few buyers, the market is defined as an oligopsony.*

somewhat more than 5%. Ethiopia is in fact one of the world's least industrialized countries. As witnessed in the latest UNIDO indicators, ranking 93 countries for 2000, Ethiopia is the last in terms of manufacturing value added per capita, with $12, well below Kenya ($34), Madagascar ($25), and Zimbabwe ($130)[12]. Furthermore, the share of complex products (i.e. medium and high technology products) in manufacturing value added and exports is extremely low, even by African standards.

As real exchange rate: RER are commonly used as indicators to measure a country's competitiveness in international trade, five types of RER could be taken to assess the competitiveness of local firms in Ethiopia. These are RER1 that uses the Consumer Price Index (CPI) to derive the real exchange rate, RER2 the implicit GDP deflator, RER3 an index of competitiveness of manufacturing sector in both domestic and international markets, RER4 an index of competitiveness of manufacturing in terms of profitability in relation to non tradables, and RER5 an index of competitiveness of agriculture relative to domestic manufactures.

Recent studies show that all five RER series generally witnessed an improvement in the particular aspect of competitiveness over the post reform years, in particular from about 1994/95. Improvement in internal competitiveness (that is relative competitiveness of tradable production vis-à-vis non-tradable production) revealed by RER2 is of a relatively smaller in magnitude compared to the degree of improvement measures in terms of RER1. This indicates that the common method of using CPI (which presumably incorporates some regulated prices) as the price index in measuring real exchange rate tends to slightly overstate improvement in competitiveness revealed by these estimates.

Both international and internal competitiveness of domestic manufacturing have improved following the reforms. The price raising impact of exchange rate depreciation has been strong enough to compensate for the price-lowering effects of trade policy reforms in maintaining competitiveness of domestic manufacturing production. RER4 (agricultural terms of trade) has recovered from the low levels prevailed during 1984/85-9991/92. However the degree of improvement in profitability indicated by this index is the lowest compared to the improvements recorded by the other four indices.

Recent study on trade integration of Ethiopia,[13] released in July 2004, summarizes the competitiveness of Ethiopian products as follows.

> *First, there has been an improvement in the overall competitiveness in Ethiopia following the reforms of the early 1990s. This can be attributed to the managed floating exchange rate regime of the country and the maintenance of fiscal and monetary stability despite significant external shocks. Second, competitiveness measured by the RER1 using the CPI as the relevant price index overstates the competitiveness of the economy.*

[12] *UNIDO (2004), Industrial Development Report 2004.*
[13] *Diagnostic Trade Integration Study for Ethiopia, Final Version, Volume I, July 2004, p.26-28.*

*Third, agriculture competitiveness was less than that of manufactures, probably also due to the terms of trade shocks that were associated with the decline in coffee prices. Finally, it is observed that public enterprises that are associated with the more capital intensive sectors tend to be protected more, contrary to the allocation of resources that could take place under a more liberalized and private sector driven economy, particularly those relating to manufacturing. Thus, reducing the size of the public sector could serve greater competitiveness through the better allocation of resources.*

### 3.3 Existing or potential entry barriers

It has been well acknowledged by international financial institutions and other concerned bodies that the country has no significant quantitative restrictions on imports. As a result of the tariff reform, the range of tariff rates narrowed from 0% - 240% at the beginning of the 1990s to 0% - 80% in 1995. The current tariff structure, introduced in 2003, consists of six rates: 0%, 5%, 10%, 15%, 20% and the highest 35%. During the same period, the tariff bands (the number of official tariff rates) were reduced from 23 to 6. It is important to note that the current rates are very close to those that will be used for the common external tariff of COMESA's Customs Union (CU), where the maximum rate will be 30%.

Existing constraints to trade in Ethiopia are more identified with those related to the private sector development than the trade regime. However private sector development issues go well beyond the issues of trade in general and more related to the Integrated Framework in particular. For instance, few enterprises owned by the government and/or ruling party, usually known as *party-statals*, have been alleged by the private sector for controlling the supply of certain goods and services in the market. Ethiopian Telecommunication Cooperation (ETC), Ethiopian Electric Power Corporation (EEPCO), & Ethiopian Postal Service could be cited as examples, from parastatals, in this regard. These are the only producers and/or suppliers of the products and/or services in the respective sector (s). Although power generation & transmission up to 20 KMW in the energy sector has been allowed for local private investment very recently, not yet realized.

With respect to tariffs, nowadays, these do not constitute a meaningful trade barrier to access the Ethiopian market and all Ethiopian's trade partners benefit at least from the Most Favoured Nation (MFN) regime. However, there are apparently some implementation difficulties. For example, within the 2003 tariff schedule, there remain some products with an import duty of 40%. For some other products, the applied duty rate could be dissimilar between trading partners.

Following the introduction of anti-corruption legislation since 2001, the corrupted government officials have been tried and convicted for accordingly. If the present pattern and pace persist, corruption might not appear to be a significant barrier to investment or trade in the future. None the less, one can not say that corruption dose not exist as trade entry barrier in Ethiopia.

### 3.4 Market Concentration

Market concentration is a function of the number of firms in a market and their respective market shares or the extent to which the top firms in an industry take up a large portion of the market share. For distance in Ethiopian case, the soft drink industry is totally occupied by the largest two companies: MOHA and East African Bottling

In terms of production, the manufacturing sector concentrates in the production for domestic use of construction materials, metal and chemical products, and basic consumer goods such as food, beverages, clothing, and textiles. The sector is dominated by about 110 public enterprises, which account for more than 75 percent of total value. Production by state-owned enterprises is concentrated in food and beverages, textiles, clothing, leather products, tobacco, chemical, rubber, plastic and cements sectors.

Private sector manufacturing activity follows a similar pattern. Production is concentrated in bakery products, meatpacking, textiles, footwear, construction, metal works and furniture. In the short term, the sustainability of the manufacturing sector's recovery depends on a number of factors, including how well the private sector responds to market incentives, the refraining of the government from interfering in the market, and the capacity of public enterprises to adapt to a more competitive market environment.

If we consider foreign trade, as in many developing countries, one major feature of Ethiopia’s exports is the high geographical concentration. In 2002, from total exports of $415 million, almost 70% were sold to only five partners: EU, Djibouti, Japan, Saudi Arabia and United States. These countries were already the first five partners in 1995, showing a general stability in the direction of Ethiopia's exports. However their share shrank over the period, compared to 1995 when the exports directed to these partners were 90%. This decrease occurred mainly in favor of India, Israel and to a lesser extent, Pakistan.

As noted with exports, Ethiopia’s imports are also concentrated with regard to their origin, but, at the same time, import concentration is relatively lower than that of exports. In 2002, a little more than 60% of Ethiopia’s total imports amounting to $1.6 billion originated from five countries: EU, China, United States, United Arab Emirates and Japan. From 1995 to 2002, the first five countries as a group kept a relatively constant share in Ethiopia’s imports, but the composition of the group has changed over the period. In fact, the main changes are related to the growing importance of China – which in 2002 accounted for 9% of Ethiopia’s imports, compared to 2.3% in 1995 – and the United Arab Emirates, whose share rose to 7.2% by 2002 from a negligible level at the start of the period.

### 3.5 Structure of the market

Here we try to show the categories of firms in Ethiopia based on the structure of the market. Market structure is the term used to describe the way in which industry competitors interact. These market structures include: perfectly competitive, monopolistic completion & monopoly. Now we try to locate firms in Ethiopia to these market structures.

- Cement industry, Ethiopian Telecommunication and Ethiopian Electric Corporation could be cited as Monopoly market**s** especially owned and run by the government.
- Soft drinks industries, owned by two firms: MOHA and East African Bottling could be good examples of oligopoly markets. This has resulted in denial of one of basic rights of consumers, the right to choose among different products and services. For instance, in the only five star international level hotel, Sheraton Addis, one can not have access to soft drinks manufactured by the East African Bottling Ltd., only because the hotel does not serve other soft drinks not produced by its sister enterprise, MOHA.
- Plastic industries and soap industries could be taken as monopolistically competitive.
- If we look at the leather & leather products sector, the market is not highly concentrated. There we have about 20 industries in the market with approximately a few variations in market share. Further study is needed to know the market concentration slithering in the industry.

## IV Competition Law

It has been well known fact that consumers have a strong interest in effective competition policy and regulation. We need rules to control anti-competitive behavior in all market economies, whatever their mix of private and state enterprise, we as consumers need ensured lower prices, better choice and quality, and access to essential goods and services.

However, for a long time Ethiopia's economic regulations did not contain any real competition law until April 17, 2003, when a Trade Practice Proclamation No. 329/2003 came into force. This newly introduced competition law falls under the purview of the Ministry of Trade and Industry. It intends to regulate anti-competitive practices and to protect the public from abrupt shocks; it will regulate prices and ensure equitable distribution of certain basic goods and services during times of shortage and irregular supply. The core objective of the new law is to impede anti-competitive practices and to stop market monopoly behaviour and/or agreements. Although a Commission was set up since the beginning of 2004, the reform process was not yet fully realised. In particular, a number of provisions, which created some confusion in the current law, need to be amended.[14]

For example, the law allows the Government to authorize, as an exception, anti-competitive agreements if they are considered to be advantageous to the national economy. In this connection, it is important to note that most of the bilateral trade agreements, like the EU Association Agreements – and similar accords, with third countries containing an FTA – almost always mention practices that are incompatible with the proper functioning of the Association Agreement, insofar as they may affect trade between the Community and the partner, such as: (a) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition; (b) abuse by one or more

[14] *TRANSTEC (2004), Final Report on the Study of Impact Assessment of EPAs on Ethiopia, p 35.*

undertakings of a dominant position in the territories of the Community or the partner as a whole or in a substantial part thereof; and (c) any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods.

Therefore, if the future trade agreements contain the same kind of commitments as the Association Agreements, they could introduce new challenges for Ethiopia, regarding the exceptions included in the current competition law. In fact, as one of the main objectives of the exceptions is to guarantee low prices for certain basic and essential consumer goods, another way to obtain equivalent results is to fund directly the consumers and/or to introduce, when necessary, price controls.

Ethiopian and foreign investors alike complain about the preference shown to party-owned businesses. From the private sectors point of view, although it is appreciable that Ethiopia at least legislated against business practices and considered the importance of fair competition, yet the newly introduced proclamation is believed to be still very far from a truly competitive market. To achieve the intended objectives of the proclamation, it has been argued that trade should be performed in accordance with the market principles (guided by demand and supply) and a system should be established introducing conducive environment to promote competition and competitiveness. Moreover, it has been said that in order to address the prevailing imbalance in and among the actors in the economy both the strength of "Hercules and wisdom and justice of Solomon [are required] to establish an enabling environment that could pass the simplest test of level playing field and fair competition".

Mainly due to lack of competition law in the country, the required and outlined issues like: evolution, foundation, legislative history, and philosophy; objectives, scope and coverage; treatments of horizontal and vertical restraints, dominant market positions, mergers and acquisitions, checks and balances; construction and interpretation of 'efficiency' and 'fairness' could not be discussed in detail. However, some cases of anticompetitive practices are highlighted below.

**Case 1: Monopoly in Ethiopian Telecom Sector**

*The Government-owned Ethiopian Telecommunications Corporation (ETC) is the country's only telecom company, with a monopoly power in providing a national landline and mobile phone network. EthioMobile, the mobile division of ETC, remains the country's only mobile operator. ETC has been repeatedly criticized for its poor performance in delivering telecom services. The company still has less than one percent coverage among Ethiopia's potential fixed line customers. Mobile coverage had mostly been limited to the Addis Ababa region, [only very recently being expanded to other regions], and the customer base is low, compared to other African nations The Ethiopian authorities started a slow and partial privatization of ETC two years ago. A few months ago, ETC entered into a € 40 million deal with Nokia, to upgrade its poor GSM network. Under the deal, Nokia would provide a full range of GSM and GPRS network infrastructure, including base stations and assist in network planning and implementation, and project management.*[15]

[15] *Source: Afrol News, 2004.08.24 (www.afrol.com/articles/13806)*

**Case 2 Anticompetitive practice in the Oil Transport sector**

*One year and eight months after its creation by federal decree, the Trade Practice Investigation Commission has yet to put its house in order before it tackles any business disputes. It returned, unsolved, an appeal lodged by owners of oil trucks in their dispute with TOTAL Ethiopia. According to Ephraim Tufer, Domestic Trade Department Head at the Ministry of Trade and Industry, the Commission has yet to develop procedures on how to receive complaints, and manuals on how to investigate them. Owners of close to 206 oil-transporting trucks have now taken their case to a regular court, claiming damages worth 7.1 million Birrs (US$ 781,000) from TOTAL, alleging that the international oil giant unfairly put them out of the market. TOTAL Ethiopia covers 25 percent of the annually distributed oil in Ethiopia, estimated to reach 1.4 million cubic litres. Shell Ethiopia covers the major share of 60 percent, while Mobile Oil East Africa Ltd. takes the remaining. In October 2004, TOTAL and Mobile had issued a public tender, inviting share and private limited companies, with 20 or more trucks, to bid for its business. This infuriated a large number of small-scale truck owners who felt that the criterion set to qualify as prospective bidders had completely marginalized them. A month later these truck owners took their case against TOTAL to the Trade Practice Investigation Commission, chaired by Harka Haroye, Minister of Justice. The Trade Practice Proclamation has objectives to "secure fair competitive process through the prevention and elimination of anti-competitiveness and unfair trading practices" as well as protecting consumers from disruptions in demand and supply. Unable to secure an administrative ruling from the Commission, truck owners, however, decided to seek justice from the judiciary and filed charges at the Federal High Court, First Civil Bench, on 6 December 2004. The owners have also appealed to the Court to suspend TOTAL from proceeding on the tender result, until such time as the final ruling is served through the litigation.*[16]

***Case 3 Price Hike in Sugar Supply is becoming a Common Phenomenon***

*Arbitrary price hike on Sugar, one of the basic consumer goods, has been a common phenomenon these days and adversely affecting consumers' right to basic necessities. For instance, some years back the price of one kg. Sugar was 3-4 birr, and these days the consumers are obliged to pay 7-8 birr for one kg. Sugar, which shows about 100% price increases. This has been admitted by the government officials. Minister Harka Haroye, Commissioner of the Investigation Commission said that the prices of goods and services in the country are determined not only based on information, manly market principle but also on artificial reasons whose sources are unknown. The minister added that the business practice and some businessmen are not yet transformed them selves from backward practices and outlooks and hence arbitrarily increase the prices of goods and services as they wish and trying their best to push out ethical businessmen and firms from the market. The minister sited as an example the unnecessary and artificial price hike of sugar in the past two weeks due to unethical and un fair trade practices done by some individuals with a view to take advantage of the political problems observed following the contested May 15, 2005 National Election result, without any shortage of sugar supply or increase in production costs.*[17]

# V Institutional and Procedural Aspects

## 5.1 Structure of the Competition Authority

As has been reiterated above, Ethiopia does not have a competition commission as in other countries. Body acting in lieu of such commission is an Investigation Commission established by proclamation No.329/2003. As stipulated in the proclamation, the commission was expected to comprise members from the Government, private organs and consumer association, to be appointed by the Prime Minister (Art.13). The commission so established is accountable to the Ministry of Trade and Industry, where the secretariat is situated. Currently, the commission has four members chaired by Minister of Justice, other members from the Prime Minister's office, National Bank of

16 Addis Fortune, 2004.12.26 (www.allafrica.com)

17 *Excerpt from an article "Price Increase not based on market principle denounced in Ethiopia" posted by Alemayehu Gebeyhu, on the Addis Zemen, Amharic Version, Daly Newsletter, Jnly 8, 2005 Vol 64, No 301.*

Ethiopia, and Quality and Standards Authority of Ethiopia, all of who are drawn from the Government.

### 5.2 Power of the Authority (Investigative, prosecutorial, adjudicative.)

Mainly the commission is entrusted to undertake investigations on complaints submitted to it and takes related measures required to finalize its investigation (Art.15).

### 5.3 Procedures under which the authority takes decision in a case

The commission upon receipt of complaint(s) from any aggrieved party in violation of the provisions of the proclamation:

- Compels any person and/or institution to submit information and documents;
- Compels witness(es) to appear and testify at hearings, with oaths or affirmations;
- Undertakes further investigation, by using expertise from different disciplines, when it deems necessary; and
- Takes administrative measures on complaints it believed to do so; upon approval from the Ministers

### 5.4 Annual Budget of the Authority

As the Commission is newly established and due to some problems to access information, the Commission's annual budget is not known by now. (To be identified in the future study).

## VI Regional Integration

Ethiopia is a founding member of two regional blocs: the Intergovernmental Authority on Development (IGAD)[18]; and the Common Market for Eastern and Southern Africa (COMESA)[19].

Although the priority areas of IGAD include infrastructure development, food security, environmental protection, humanitarian affairs, and conflict prevention, management and resolution, detailed discussions are left out mainly not to divert the focus of this paper. However, it has been argued that Ethiopia, being the biggest and historically important country in the sub-region, is committed to strengthening IGAD and strives to achieve its objectives.[20]

Duty free access to COMESA member countries has been argued to significantly increase Ethiopia's exports. The only difference is that because one is dealing with preferential access rather than increases in world prices, we take as the change in export price the difference in tariffs between Ethiopia and COMESA. This time given that there is

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[18] *Other members of IGAD include: Djibouti, Ethiopia, Eritrea, Sudan, Somalia, Uganda and Kenya.*

[19] *The COMESA was established in November 1993 in Kampala, Uganda. Currently it has 20 member states that stretch from Egypt in the North to Swaziland in the South. The current members of COMESA are: Angola, Burundi, Comoros, Congo, D.R, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, Zimbabwe (Tanzania has recently left COMESA). Before the formation of COMESA in 1993, the regional community was known by its previous name, Preferential Trade Area for Eastern and Southern Africa (PTA), which was established in September 1981, had a different treaty to its successor, the COMESA. All previous PTA members, except Comoros and Somalia, have signed the COMESA treaty. COMESA has a combined population and GDP of close to 400 million and US$ 170 billion, respectively. The total surface area is over 9 million km$^2$ of which 60% is endowed with rivers and lakes with a potential for irrigation, fisheries, hydroelectric etc. Less than 10% of the arable land in the region is under cultivation and only 5% of available water is used for cultivation. The region has used only 4% of its hydroelectric potential. The region is also a source of wealth of minerals.*

[20] *Solomon Kebede, (2004), Ethiopia: 2005 Country Commercial Guide, p.11.*

preferential access, all products can be exported to the partner countries providing preferential access (i.e., one is observing trade diversion that will benefit Ethiopia's producers). Moreover, it has been also argued that total exports would increase by more than $100 million (or more than 20 percent of current exports). Almost 60 percent of the total increase in exports has been expected to occur in meat products. Manufacturing export was anticipated to increase by $5 million or slightly more than one percent of current exports. In a nutshell, duty free access to COMESA members was anticipated not only to provide a significant increase in exports, but also to help diversify Ethiopia's export bundle.

However, as could be noticed from several studies, Ethiopia's total export and import were not as per the anticipations. For instance, in the period between 1991 and 1998 total Ethiopia's export to COMESA was 181 million US dollars accounting only for 1.65% of the total intra- COMESA exports, while its imports accounted for 6.06% of the total intra-COMESA imports. On the other hand, as of 2002, COMESA countries accounted for approximately 14% of Ethiopia's exports against nearly 10% in 1995. For the two years, however, exports to Djibouti accounted for most of COMESA's total share[21]. As a consequence, Ethiopia's exports to COMESA countries are considered as very low.

In general, Ethiopia has been one of the least exporter and the highest importer countries within the COMESA region. Ethiopia's participation in the regional economic integration schemes is visible, but not at the operation (business) level.

Perhaps most creative venture of COMESA has been the creation of a regional clearing house to enable member country merchants to trade with one another in local currencies rather than in convertible ones, theoretically making intra-African trade much easier. This in its turn is believed to reduce dependency on foreign monetary instruments; and enable settlement of account imbalances quarterly in hard currency. The National Bank of Ethiopia is the founding member of the clearinghouse.

COMESA has achieved a Free Trade Area (FTA) from 31st October 2000, following the elimination of tariffs by nine of the member states[22] on products originating from COMESA. Although currently all members have achieved a tariff reduction rate of 80-90% on goods originated from member countries, Angola, DR Congo, Ethiopia and Swaziland could not go in the same pace with other members.[23] The reason for postponing the joining of the FTA has been argued to be to give themselves more time and space to undertake the necessary studies, consult all the stakeholders and make the required adjustments. The fear of revenue loss, as tariff revenue has been one of the most significant sources of government revenue, and possible potential damage to their weak industrial structures and low degree of competitiveness have been another factor forwarded by these group. Never the less, it has been argued that COMESA is in the final stages of harmonizing and reducing tariffs within and among member countries.

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[21] *Exports to Djibouti represented 9% and 13% of Ethiopia's total exports in 1995 and 2002 respectively.*

[22] *These were Djibouti, Egypt, Kenya, Madagascar, Malawi, Mauritius, Sudan, Zambia and Zimbabwe.*

[23] *Alemayehu Geda and Haile Kibret (2004) Regional Economic Integration in Africa: A Review of Problems and Prospects with a Case Study of COMESA. p.7.*

With respect to the impact of revenue loss to Ethiopia, Alemayehu and Haile argued that at present the potential revenue loss from intra-COMESA trade is low owing to the low level of intra-regional trade flows. According to their calculation, Ethiopia's revenue loss due to opening its markets to COMESA would be less than one percent (although shifting from EU to COMESA could mean a lot of loss in tax revenue)[24].

However, the issue of revenue loss could be some how difficult to know before joining the free trade area as it would be difficult to predict the degree of trade shift from current major trading areas mainly the EU to COMESA.

Another low utilization of COMESA's facilities by Ethiopia has been observed from the fact that it is one of the lowest beneficiaries, while one of the highest shareholders of the PTA/COMESA Bank (currently based in Nairobi) [25]

As could be observed from the above discussions, one can see that Ethiopia is lagging behind in drawing benefits both for the consumers and for the economy while the country has been cited as a forerunner in fulfilling obligations of collective economic development of the region and Africa in general. In other words, although the country's participation in regional economic integration schemes (both at the formation and continuity) is visible, mainly due to weak involvement at the operation (business) level, Ethiopia's realization of concrete results from COMESA is so far limited. Poor participation of the private sector has also been cited as one of the reasons. But for the private sector to participate, some preliminary home works, such as creating awareness, involving it at all levels of negotiation and implementation levels and providing a competitively conducive investment and exporting environment, have to be done by the public sector.

Regarding Regional Competition Policy and Law (CPL), it has been reported that there is a common understanding on the importance of regional CPL, as the region moves towards the implementation of a COMESA Customs Union. Moreover, it has been acknowledged that it is only through a regional competition policy that member states can be able to stem the anti-competitive behaviors that the region has witnessed over the past few years.[26]

To this end, the COMESA has approved the regional competition and regulation policy since December 2004. Although the policy is characterized as "beginning of a process" and needs instruments for implementation, still it could be used as a good starting point for reference to develop and enforce national competition policies. And hence, member states are expected to positively respond to the calls of COMESA for formulation and implementation of respective national CPL to further the implementation of regional CPL.[27] Moreover, it would be advantageous if lessons are drown from the East African

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[24] *Alemayehu Geda and Haile Kibret, (Ibid: 11).*

[25] *Ethiopia is a founding member of the Bank and bought 12.09% of its share at 26.7 million US dollars, while from 1986 to 1998 benefited almost zero from the bank's trade financing facilities out of the total 312.1 million US dollars loans the bank provided, except was able to borrow only once amounting with US dollars 457,063 for a single project out of about 155 million US dollars total project finance disbursed in the indicated period. When this is compared with Kenya, another country of the same share holding, for example, it got 30 millions of US dollars for project financing. Only in one year (1998), Tanzania has borrowed about 7.3 million, for trade financing. The banks trade and project financing facilities give priority for export-oriented projects and with regional focus. Proper utilization of such facilities would have meant that, the country could have boosted its export capacity to some extent.*

[26] *COMESA 2004 Annual Report p. 47.*

[27] *Source: Zambia Daily Mail, Lusaka, 31st December 2004*

Community Competition Bill, taking into account selective aspects of the Bill fitting to the real situation of Ethiopia.

## VII Consumer Protection Law

The country has no integrated Consumer Protection Law except that consumer issues are being treated under different laws: civil law, criminal law, trade law and others. Yet, as the Laws are too old and did not take into account consumers issues and rights at present, the AHa Ethiopian Consumer Protection Association (AHa ECOPA) is working on new draft Consumer Protection Law, based on United Nations Guidelines on Consumer Protection, to be submitted for the parliament, in the next fiscal year.

## VIII. CONCLUSION

Since 1991 Ethiopia has introduced the market economy strategy. The market structure is of different mix and business is functioning not in the interest of the consumers. The country has no competition policy and law; and Consumer protection policy and/or law and institutional settings to address anticompetitive and unfair trade practices. This has resulted in abuse of consumers' rights and interests and aggravating absolute poverty.

State and/or Party-owned enterprises, especially those established through "provident fund" mechanisms are alleged to have been negatively affecting trade, competition and competitiveness in the country. Existing Investigation commission does not function actively; and also can not replace competition commission.

Initiation of the CAPACITY BUILDING PROJECT ON COMPETITION POLICY IN SELECT COUNTRIES OF EASTERN AND SOUTHERN AFRICA (7UP3 Project) is believed to be vital and timely in order to realize effective competition regime in the project countries in general and in Ethiopia in particular. The writer of this paper believes that if the concerned parties are serious enough we can make a difference.

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**ANNEX**

**Sectoral Approach**

In this section, analysis of regulations in three identified sections: pharmaceutical, power and financial sectors, from consumers' perspective, would be forwarded.

**A. Pharmaceuticals**

Till 1974 attempts have been made to establish a health care system that involved the participation of the private sector in the supply and services of drugs. To administer this, some isolated laws and regulations were issued. The laws and regulations were not periodically revised or amended to fit the demands and the progress made within the sector and the relative modernization, which was under way in the country.

Since 1974, the military government of Ethiopia, which came to power through a revolutionary upheaval, adopted the strategy of planned economy. Although "a primary health care strategy" was adopted by the then regime as the country's health services guide, there was no drug related policy, law or regulation that could control the drug manufacture and supply except the points raised in the strategy and indicated in the then ten years perspective plan drafted in 1985.

The then *Transitional Government of Ethiopia*, now the Government of the Federal Democratic Republic of Ethiopia, *declared the national drug policy as one of the over all socio-economic development process to safe guard the interest of the majority of the people based on the principle of self-reliance. The goal of the policy has been distribution of just and equitable pharmaceutical services to all citizens to the end that the level of welfare of the population is maximized over time (TGE 1993).*

Among the general policies are creating favorable conditions to encourage private investors to participate in the manufacture, import and distribution of drugs. It has been argued that the drug policy also shows the government's commitment to establish an effective system of drug administration and control at all levels, especially by developing the capacity to ensure drug safety efficacy and quality. Inline with this, some of the objectives of the policy include: to meet the country's demand for essential drugs and to systematize its supply, distribution and use. Purchasing power of the people has been one of the subject matters with which the drug policy is concerned. Accordingly, the policy underlines creating conducive situation to make the prices of drugs compatible with the people's purchasing power. Moreover, the policy recognizes the problem of illegal manufacturing, distribution and consumption of narcotics and psychotropic drugs.

With a view to ensure the safety, efficacy, quality and proper use of drugs the Government has established "The Drug Administration and Control Authority" through proclamation on 176/1999. This regulatory body is responsible for administering drug manufacture and supply. Among the powers and duties of the authority are included, setting standards of competence for organizations to be involved in drug trade, issuing a certificate of competence, control compliance with the standards, renew, suspend, and revoke the certificate of competence and inform it to the concerned government as per Article 6 (2) of the proclamation. Moreover, according to Article 6 (9) the Authority is expected to serve as drug information center to professionals and the public, and it shall also disseminate up to dated and unbiased information.

Despite drug administration and control law enacted, people are complaining upon the services rendered in pharmaceutical sector. The distribution and storage of drugs and dispensing drug for consumers are becoming like any commodity. In a situation where most of drugs are imported with possibilities of both desirable and undesirable effects some drugs are imported with out investigation of potential dangers as well as without taking into consideration the socio-economic condition of the society. In the pharmacies, the prices of drugs are very expensive and cost oriented than medical obligations. Even though, there is an attempt to disseminate drug related information at the national level, people at the grassroots level are ignorant about the use of medicine. Overall, it could be said that drugs are mis-used and consumers are being victimized (cases of specific incidents would be shown in the main study). This indicates that government alone cannot address the problems related to drugs.

**B. Electricity**

Electricity is provided by the parastatal utility, Ethiopian Electric Power Corporation (EEPCO. The EEPCO is the only company responsible for power generation, transmission, distribution and sales of electricity all over the nation. Comprehensive energy policy measures in power sub-sector are to build national capacity in engineering, construction, operation, and maintenance and gradually enhance local manufacturing capability of electrical equipment and appliances.

The government has taken several measures to address the power sector issues and continues to make more changes. The specific changes that have been made recently are embodied in two parallel efforts: to delineate operation and regulatory functions, and liberalize the sector to promote private investment.

Accordingly, Proclamation No. 86/1997 has been enacted to regulate the activities of electricity suppliers and thereby operation and regulatory functions were delineated. The proclamation also provides for the establishment of a regulatory authority, The Ethiopian Electricity Agency, responsible, among other things, for recommending tariffs; and establishes the principle of third party access to the grid for facilitating private investment in the future.

The enactment of the investment Proclamation No. 37/1997 particularly allows the participation of domestic private investors in the production and supply of electrical energy with an installed capacity of up to 25 mega-watts. On the other hand, production and supply of electrical energy with an installed capacity of above 25 mega-watts is open to foreign investors.

The provision embraces the development of small and medium scale capacity plants from diesel, coal, gas, hydro and other sources. Council of Ministers Regulations No. 7/1996 and as amended in No. 36/1998 extends attractive package of encouragement in the form of duty and profit tax exemptions. The investment law coupled with the new regulatory framework is believed to provide a conducive environment for private investment in the sector.

In line with the national energy policy and the issues of the power sector, a five-year development program (2000/01-2004/05) has been launched. The program consists of five subprograms, namely: Power Generation, Power Transmission, Power Distribution, Rural Electrification, and Institutional Development.

The investment program, based on the Power sector development, is a public priority that includes building new hydroelectric plants and extending the grid to different areas of the country to promote critical socio-economic benefits of industrial development, agricultural productivity, enhancement of educational opportunities and general betterment of the population.

**C Financial services**

One of the major impediments affecting the performance and growth of many Ethiopian firms, including those that are export-oriented, is the lack of short and medium-term finance at reasonable terms. A lending rate that has recently approached 10% in real terms (i.e. adjusted for core inflation) is jeopardizing the private sector's international competitiveness and is not conducive to stimulating investment for increasing exports to other market.

This high interest rate level reflects the wide, increasing spreads between lending rates and deposit rates, which, in turn, are a symptom of structural weaknesses related to the financial difficulties of the most important lending institution, the Commercial Bank of Ethiopia (CBE), currently implementing a comprehensive restructuring plan. These problems are compounded by a lack of adequate competition among banks and the absence of a financial market.