CUTS INTERNATIONAL 7UP3 PROJECT

NATIONAL TRAINING WORKSHOP ON COMPETITION POLICY AND LAW

INTRODUCTION TO COMPETITION ANALYSIS[1]

INTRODUCTION

Competition analysis is at the core of the implementation of competition policy and law since it involves the identification, investigation and evaluation of restrictive business practices (RBPs) for the purposes of remedying their adverse effects. Without a proper competition analysis, and a dedicated competition authority to undertake such analyses, it would not be possible to effectively implement even the best competition policy and law in the world.

This paper briefly outlines the basic concepts of competition before discussing in more detail the process of competition analysis, covering issues such as: (i) market definition; (ii) entry conditions; (iii) competition case investigation and evaluation; and (iv) remedial action. The paper also discusses a case study on a competition case handled by the competition authority of Zimbabwe, which illustrates the practical application of the various concepts discussed.

BASIC CONCEPTS OF COMPETITION

The concept of competition is a difficult and complex one, but one has to get a grasp of the issues involved in order to understand and appreciate its analysis. There is no singular concept of competition. It is therefore hardly surprising that the term ‘competition’ is defined in very few, if any, competition legislation of both developing and developed countries.

Schools of Thought on Competition

There are a number of different uses, definitions and concepts of the term ‘competition’ depending on who one is and what purpose one wants to use the definition for[2]. Consumers, business persons, economists and lawyers all use different concepts and definitions of competition. The ordinary consumer view of competition is that of rivalry between contestants, as in sport. Under this view, there is a winner, and someone “gets the bone”. This view is sometimes referred to as the intuitive view. The typical business person’s view of competition is likely to be similar to the intuitive view of rivalry, where competitors try to gain an advantage over others. Competition is taken as a process whereby firms strive against each other to secure custom for their products, i.e., it represents

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[2] Frederick C.v.N. Fourie & Minette Smit, *Industrial Economics for Competition Policy,* lecture delivered at the Competition Policy and Law Inaugural Southern Africa Course, organised by the Competition Commission of South Africa and held in Pretoria, South Africa, during the period 14-25 June 1999.

the active rivalry of firms for customers – thus the nature of competition is such that enterprises compete to out-smart their competitors[3].

Economists have developed different schools of thought on competition, such as: (i) the structural approach; (ii) the process approach; and (iii) the efficiency approach.

- The *structural approach* defines different states of competition in terms of structural conditions (i.e., number of firms, conditions of entry, etc). Terms like 'perfect competition', 'oligopoly', 'monopoly' and 'monopolistic competition' are used under this approach.

    - Perfect competition is defined as the market situation with numerous competitors producing homogeneous products (i.e., identical from a buyer's point of view), each so small that it cannot affect market price. There must also be no barriers to entry or exit. Under perfect competition each firm is a price-taker, and the decisions of one firm are seen to have little or no effect on the industry as a whole and, in particular, to individual firms in the industry.

    - In a monopoly market form there is only one firm in the industry, and there are no close substitutes for the product of the monopolist. Barriers to entry in a monopoly are enormous, otherwise the monopoly situation would not last long. In this market form the monopolist is the price-maker and can fix the price and allow demand to determine output, or set output and allow demand to set the price. Since there are no close substitutes of the product available, competition is absent in this market form.

    - Monopolistic competition describes a market structure combining elements of both perfect competition and monopoly. In such a market there are a very large number of firms producing differentiated goods (i.e., products which have physical differences or attributes which may be real or perceived by buyers so that the product is preferred over that of a rival firm). Furthermore, there is easy entry and exit.

    - In an oligopolistic market, there are a small number of firms that are conscious of their interdependence. Each firm thus takes into account the rivals' possible reactions while deciding on its strategy. Entry barriers exist in the oligopoly set-up, resulting in the existence of few firms in the market. The products that the oligopolists produce may be homogeneous or differentiated. Given the interdependence among the firms in an oligopolistic market, the rivalry among them is high. In terms of competition, oligopolistic markets can therefore be considered to be the most competitive.

  Under the structural approach therefore, the different degrees of competition are mainly defined in terms of market structure, ranging from perfect competition to oligopoly (a few producers) to monopoly (one producer).

- The *process approach* views competition in terms of behaviour and conduct of the market participants without much reference to market structure.

- The *efficiency* approach refers to neither market structure nor behaviour of firms but only considers the outcome or performance in terms of efficiency. Thus the approach is not concerned of what happens in the market but only on efficiency outcome – that is, if efficiency is there then there is competition. Competition under this approach is defined as *any state of*

[3] CUTS Monograph on Investment and Competition Policy #6, *All About Competition Policy & Law For the Advance Learner,* CUTS Centre for International Trade, Economics & Environment, Jaipur, 2000

affairs that maximises consumer welfare, or any efficient state of affairs regardless of market structure or conduct of firms.

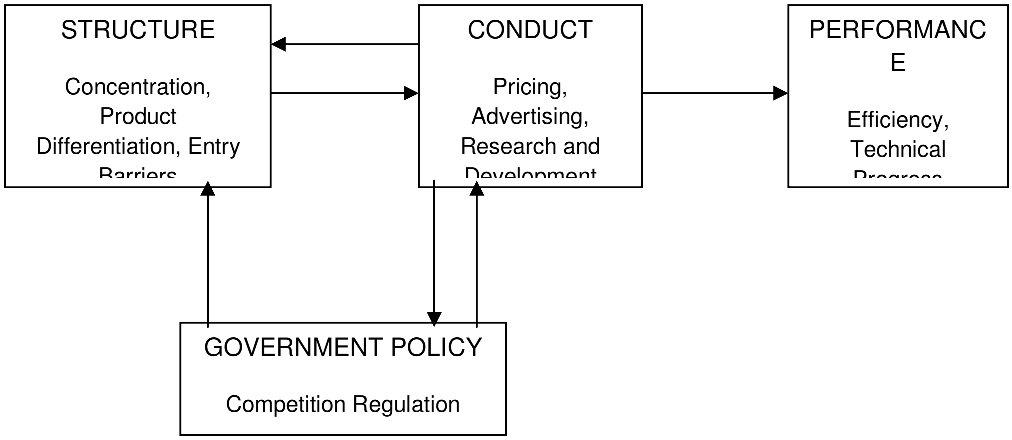
All the different approaches to competition however agree on the desirability of ease of entry by new competitors. Potential competition refers to the presence of firms currently outside the particular market, but able and ready to enter the market if the right conditions and profit opportunities prevail. This is referred to as the principle of *'contestability'.* The idea of contestability derives from an approach that contends that potential competition in itself is sufficient discipline on market incumbents to behave efficiently. A market is perfectly contestable if both entry and exit by potential competitors are costless. This approach to competition stresses that ease of entry, rather than structural conditions or actual behaviour of firms in a market, is the key requirement and should be the focus of policy.

From a combination of the above approaches to competition, viewed from the observation of the real-life behaviour of firms in a market, a general methodological approach to the economic analysis of markets has been developed based on three key concepts of structure, conduct (or behaviour) and performance. This is referred to as the structure-conduct-performance approach. The hypothesised linkage among the three concepts is that the structure (i.e., the number of players, ease of entry, etc.) of a market explains or determines to a large degree the conduct (e.g., pricing policy, advertising, etc.) of the participants in the market, and the performance (i.e., efficiency, technical progress) of the market is simply an evaluation of the results of the conduct[4]. The structure-conduct-performance relationship has been further developed to take into account the effect of conduct on the structure. It has been found that conduct can sometimes "feedback" to change structure. Viscusi, Vernon and Harrington (1998) explained that there are a number of ways in which behaviour of existing firms in a market can affect future market structure. Through investing in research and development a firm can lower its cost to a point where it can profitably price its competitors out of the market. Alternatively, firms can influence market structure by affecting the decisions of potential entrants to enter the market. In this regard, the profitability of entry can be influenced by existing firm's strategically manipulating price or capital. More directly, the combination of existing firms through mergers and acquisitions impacts market structure. Shepherd (1997)[5] also noted that a firm that is superior in efficiency or innovation so that it obtains high profits will generally increase its market share - therefore its performance will affect the market's future structure.

The Figure below presents a schematic representation of the structure-conduct-performance model as discussed above:

[4] W. Kip Viscusi, John M. Vernon and Joseph E. Harrington Jr., *Economics of Regulation and Antitrust*, Second Edition, The MIT Press, Cambridge, Massachusetts, 1998.

[5] William G. Shepherd, *The Economics of Industrial Organisation,* 4th Ed., Prentice Hall, Upper Saddle River, New Jersey, 1997



The usefulness of the structure-conduct-performance model is that it brings from the abstract the understanding of real-world markets and firms. As observed by Shepherd (1997), firms are organisations of humans, with much room for variety, historical change, and contrasting motives.

A comprehensive definition of competition is contained in the OECD *Glossary of Industrial Organisation Economics, Competition Law and Policy Terms*[6] as shown in Box below, and is the definition that has been adopted for the purpose of this paper:

Comprehensive Definition of Competition

Competition is a situation in a market in which firms or sellers independently strive for the patronage of buyers in order to achieve a particular business objective, e.g., profits, sales and/or market share. Competition in this context is often equated with rivalry. Competitive rivalry between firms can occur when there are two firms or many firms. This rivalry may take place in terms of price, quality, service or combinations of these and other factors which customers may value.

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 allocative efficiency. It includes the concept of 'dynamic efficiency' by which firms engage in innovation and foster technological change and progress.

Concentration

Theories of competition, oligopoly, and monopoly however typically assume players of equal size, and thereby specify only the number of players (i.e., many players under competition conditions, few players in an oligopoly and one player in a monopoly)[7]. Actual industries contain players of unequal size, and concentration is an attempt to capture the size distribution of firms in an industry. A simple concentration index that is commonly used is to rank firms by their market shares. Concentration therefore is a good measure of the size

[6] R.S. Khemani and D.M. Shapiro, *Glossary of Industrial Organisation Economics, Competition Law and Policy Terms,* Organisation for Economic Cooperation and Development (OECD), Paris, 1991.
[7] W. Kip Viscusi, John M. Vernon and Joseph E. Harrington Jr., *Economics of Regulation and Antitrust,* 2nd Ed., The MIT Press, Cambridge, Massachusetts, 1998.

distribution of industry players because it gives weight to the inequality of sizes. It should however be noted that a concentration index cannot fully assess the competitiveness of a particular industry since it is exclusively concerned with actual competition and ignores potential competition[8]. To measure concentration, one must first define the limits of the market (see Market Definition below).

COMPETITION ANALYSIS

Competition law aims at preventing or controlling restrictive business practices (RBPs). RBPs refer to behaviour of firms that have the aim and effect of restricting competition and the free flow of goods and services to the consumers. In Zimbabwe's competition law[9], the term 'restrictive practice' is defined as to mean:

> *"(a) any agreement, arrangement or understanding, whether enforceable or not, between two or more persons; or*
>
> *(b) any business practice or method of trading; or*
>
> *(c) any deliberate act or omission on the part of any person, whether acting independently or in concert with any other person; or*
>
> *(d) any situation arising out of the activities of any person or class of persons;*
>
> *Which restricts competition directly or indirectly to a material degree, in that it has or is likely to have any one or more of the following effects –*
>
> > *(i) restricting the production or distribution of any commodity or service;*
> >
> > *(ii) limiting the facilities available for the production or distribution of any commodity or service;*
> >
> > *(iii) enhancing or maintaining the price of any commodity or service;*
> >
> > *(iv) preventing the production or distribution of any commodity or service by the most efficient or economical means;*
> >
> > *(v) preventing or retarding the development or introduction of technical improvements in regard to any commodity or service;*
> >
> > *(vi) preventing or restricting the entry into any market of persons producing or distributing any commodity or service;*
> >
> > *(vii) preventing or retarding the expansion of the existing market for any commodity or service or the development of new markets therefor;*
> >
> > *(viii) limiting the commodity or service available due to tied or conditional selling."*

RBPs can broadly be classified into three categories: (i) anti-competitive agreements (both of a horizontal and vertical nature); (ii) abuse of dominant position; and (iii) anti-competitive mergers and acquisitions.

- Horizontal agreements take place between two or more firms at the same level of production-supply chain and who are competitors to each other. These are collusive

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[8] Ibid.

[9] Comptition Act [*Chapter 14:28*] (as amended by the Competition Amendment Act, 2001 (No.29 of 2001).

agreements or arrangements to fix prices, share markets, restrict production or rig tenders. Such agreements are sometimes referred to as 'hard-core cartels' and are the most serious anti-competitive practices.

- Vertical agreements are between firms that are at different levels of the production-supply chain. They include tie-in arrangements, exclusive-dealing arrangements, resale price maintenance, and territorial restrictions.

- Abuse of dominant position refers to a firm with market power exercising that market power by engaging in restrictive practices of either an exploitative or exclusionary nature, such as charging excessive prices, price discrimination, tie-in sales, refusal to deal, predatory pricing, raising rivals' costs, abuse of intellectual property rights, resale price maintenance, and exclusive dealing.

- Anti-competitive mergers and acquisitions are those that create dominant players that abuse their dominant positions by exercising their acquired market power.

RBPs are in one way or another prohibited in all competition laws, and are considered using either the *per se* prohibited and/or 'rule of reason' approaches[10]. The prohibition of RBPs is included as one of the primary objectives of the competition legislation of regional countries such as Kenya, Malawi, South Africa, Zambia and Zimbabwe as follows:

- Kenya (*The Restrictive Trade Practices, Monopolies and Price Control Act Chapter 504*): An Act of Parliament to encourage competition in the economy by prohibiting restrictive trade practices, controlling monopolies, concentration of economic power and prices and for connected purposes;

- Malawi (*Competition and Fair Trading Act (Cap. 48.09)*): An Act to encourage competition in the economy by prohibiting anti-competitive trade practices; ... to regulate and monitor monopolies and concentrations of economic power; to protect consumer welfare; to strengthen the efficiency of production and distribution of goods and services; to secure the best possible conditions for the freedom of trade; ... and to provide for matters incidental thereto or connected therewith;

- South Africa (*Competition Act No.89 of* 1998): Act to provide for the establishment of a Competition Commission responsible for the investigation, control and evaluation of restrictive practices, abuse of dominant position, and mergers ... ;

- Zambia (*The Competition and Fair Trading Act Chapter 417*): An Act to encourage competition in the economy by prohibiting anti-competitive trade practices; to regulate monopolies and concentrations of economic power; to protect consumer welfare; to strengthen the efficiency of production and distribution of goods and services; to secure the best possible conditions for the freedom of trade; ... and to provide for matters connected with or incidental to the foregoing;

[10] The 'rule of reason approach' is where an attempt it made to evaluate the pro-competitive features of a restrictive business practice against its anti-competitive effects in order to decide whether or not the practice should be prohibited. The opposite of the rule of reason approach is to declare certain business practices *per se* illegal, that is always illegal. Price fixing agreements and resale price maintenance in many jurisdictions are *per se* illegal. (OECD's *Glossary of Industrial Organisation Economics, Competition Law and Policy Terms*).

- Zimbabwe (*Competition Act [Chapter 14:28]*): Act to promote and maintain competition in the economy of Zimbabwe; ... to provide for the prevention and control of restrictive practices, the regulation of mergers, the prevention and control of monopoly situations and the prohibition of unfair trade practices; and to provide for matters connected with or incidental to the foregoing.

Competition analysis, which is the main subject of this paper, is therefore concerned with the identification, investigation and evaluation of RBPs. Once the RBP has come to the notice of the competition authority through referral or notification the analysis should begin with the definition of the market that has been affected or in which the RBP is occurring before evaluation of the competition, or public interest, concerns arising from the RBP, and institution of the relevant remedial actions.

Market Definition

It is stated that market definition is usually the first, and often the most important, task in competition analysis since all calculations, assessments, and judgements about the competitive implications of any given conduct depend on the size and shape of the relevant market[11].

A definition of the relevant market is imperative to establish the context for the exercise of market power, and the competitive effect of a RBP under investigation. Once the market has been defined, the behaviour or conduct in question can be examined with a reasonable degree of accuracy to determine whether it has or would have an anti-competitive effect. If a market is not defined correctly, it is not possible to calculate the market shares of the suppliers, and to assess the relative importance of the firms in that market. A wrongly defined market is likely to mean that the conclusions resulting from the analysis of the issue are not likely to be correct.

The need for accurate market definition is probably greatest when competition cases involving abuse of dominance and mergers are being considered. A dominance investigation must be confined to the smallest possible market likely to be affected otherwise the effects of the anti-competitive conduct might be understated. If the market is defined as being very large, the dominance of an otherwise abusive firm of that market might seem small and thus escape the scrutiny of the competition authority. To prove a case of abuse of dominance, the abusive practice or conduct must not only exist but the relevant market in which the practice or conduct has greatest effect must be identified. In merger examination as well, particularly involving horizontal mergers[12], defining the market(s) in which the merger is occurring is essential to assess its full competitive effects.

Relevant Market

[11] John Clark and R Shyam Khemani, 'Market Definition and Assignment of Market Shares, in *A Framework for the Design and Implementation of Competition Law and Policy,* The World Bank, Washington D.C., and Organisation for Economic Co-operation and Development (OECD), Paris, 1999.

[12] A horizontal merger is one between firms that produce and sell the same products, e.g., between competing firms. Horizontal mergers, if significant in size, can reduce competition in a market and are often reviewed by competition authorities. Horizontal mergers can be viewed as *horizontal integration* of firms in a market or across markets. Other types of mergers are vertical merger (between firms operating at different stages of production, e.g., from raw materials to finished products to distribution), and conglomerate mergers (between firms in unrelated business, e.g., between an automobile manufacturer and a food processing firm) (OECD *Glossary of Industrial Organisation Economics, Competition Law and Policy Terms*).

Two components of a market are its product and geographic reach. The product market describes the good or service that is bought and sold. From a buyer's perspective, the product market is determined from his ability to switch from one product to another closely substitutable product. The key element in this market is substitutability of demand. The greater the extent to which one product is substitutable for another, the greater the likelihood that they are in the same market.

One definition of a product market based on what is referred to as the SSNIP Test[13] is "a product or group of products and a geographic area in which it is sold such that a hypothetical, profit-maximising firm that was the only seller of those products in that area could raise prices by a small but, significant and non-transitory amount above prevailing levels" (OECD, 1993).

The geographic market describes the locations of the producers or sellers of the product. It defines the geographic area from which the goods or services are obtained, or within which the goods or services are supplied. It is determined on the basis of customers' ability to substitute one supplier with another. If one supplier imposes a small increase in the price of a product and the customer is able to easily switch to another supplier of the product, then both suppliers can be considered to be in the same geographic area. In practice, the limits of geographic markets are often determined by transportation costs and time, tariffs (in the case of imports) and regulations (e.g., licensing requirements, say that a dairy factory can only be licensed to sell milk in one administrative region, but not in another).

The geographic markets for heavy but low value products may be quite small because the cost of transportation over long distances is large relative to the value of the product. Generally, the higher the value of the product to be purchased, the more likely are buyers to travel and shop around for the best buy, and the wider the geographic extent of the market is likely to be.

Most economists agree that the ideal market definition must take into account substitution possibilities in both consumption and production. George Stigler (1955)[14], expressed this as follows:

> "An industry should embrace the maximum geographical area and the maximum variety of productive activities in which there is a strong long-run substitution. If buyers can shift on the large scale from product or B to A, then the two should be combined. If producers can shift on a large scale from B to A, again they should be combined. Economists usually state this in an alternative form: All products or enterprises with large long-run cross-elasticities of either supply or demand should be combined into a single industry.".

The Competition and Consumer Policy Division of the Organisation for Economic Co-operation and Development (OECD) in the OECD's *Glossary of Industrial Organisation Economics, Competition Law and Policy Terms* (1991) amply summarised and explained the term 'market definition as used in competition analysis, as stated in the Box below:

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[13] SSNIP is an acronym formed from the phrase "a **S**mall yet **S**ignificant and **N**on-transitory **I**ncrease in **P**rice". The SSNIP Test is a theoretically sound way to define a market, and it provides an excellent conceptual framework, but it is sometimes difficult to apply because there might not be enough data available to use the test in a rigorous way.

[14] George J. Stigler, "Introduction", in National Bureau of Economic Research, *Business Concentration and Price Policy,* Princeton University Press, Princeton, 1955.

The starting point in any type of competition analysis is the definition of the "relevant" market. There are two fundamental dimensions of market definition: (i) the product market, that is, which products to group together and (ii) the geographic market, that is, which geographic areas to group together. Market definition takes into account both the demand and supply considerations. On the demand side, products must be substitutable from the buyer's point of view. On the supply side, sellers must be included who produce or could easily switch production to the relevant product or close substitutes. Market definition generally includes actual and potential sellers, that is, firms that can rapidly alter their production processes to supply substitute products if the price so warrant. The rationale for this is that these firms will tend to dampen or curb the ability of existing firms in the market to raise price above the competitive level. The location of buyers and sellers will determine whether the geographic market is local, regional, national or international. If markets are defined too narrowly in either product or geographic terms, meaningful competition may be excluded from the analysis. On the other hand, if the product or geographic markets are too broadly defined, the degree of competition may be overstated. Too broad or too narrow market definitions lead to understating or overstating market share and concentration measures.

The U.S. Department of Justice and the Canadian Bureau of Competition Policy Merger Guidelines for example, provide a paradigm for defining the relevant product and geographic markets that is based on the likely demand response of consumers to an anticompetitive price increase. A market is defined as a product group of products and a geographic area in which it is sold such that a hypothetical, profit-maximising firm that was the only seller of those products in that area could raise prices by a *small but significant and non-transitory* amount above prevailing level. The result of applying this paradigm is to identify a group of products and a geographic area with respect to which sellers could exercise market power if they were able perfectly to coordinate their actions so as to act like a monopolist.

Market Shares

Firms that are included in the identified relevant market (comprising both the product and geographic markets) must be assigned market shares, which are indicators of a firm's market position or power. This exercise is of utmost importance in all competition cases, but at varying degrees. In cases involving abuse of dominance, it is imperative that market dominance of the firm under investigation must first be proved from the firm's share of the relevant market before proceeding with the competition analysis. Also in cases involving mergers, particularly horizontal mergers, market shares of the merging parties give an indication of the magnitude of the competition concerns to arise from the merger. In the case of vertical restraints, the competitive effects are greater if one or both parties are dominant in the downstream and/or upstream markets, and this requires the calculation of market shares in the relevant markets.

Market shares can be measured in several ways, in money value, units of sales, units of production, production capacity, size of reserves, etc. The need is to have an accurate comparative basis of the market shares of the firms in the market. For example, if products within a market are homogeneous, then unit sales can be used to measure market shares. Market shares of heterogenous products may be better measured by value of sales. Market shares can also be measured in terns of production capacity, particularly in manufacturing industries.

As indicated earlier, market shares are useful in measuring concentration levels in industries since the degree of market concentration is dependent not only on the number of players in an industry but also on the respective market shares that each firm in the industry holds. Market concentration refers to the extent to which production of a particular good or service is confined to a few large firms, or to the extent to which a small number of firms account for a large proportion of economic activity in an industry. Accordingly, market concentration is a function of the number of firms in a market and their respective market shares. Therefore, the more concentrated an industry is the less competitive it is.

Various concentration indexes or measures have been suggested in the field of industrial organisation economics. These measures are used to describe market structure and/ or as a *prima facie* indicator of market power or competition among firms. Essentially, concentration indexes attempt to measure the number and relative size inequality of firms. The most frequently used measures are *four-firm concentration ratio* (CR_4) and the *Herfindahl-Hirschman Index* (HHI). The CR_4 measures the relative share of total industry output accounted by the four largest firms. It is calculated by summing the market shares of the four largest firms. It has generally been accepted that a market with a CR_4 of 75 percent or more is highly concentrated, and therefore potentially anti-competitive. (Similarly, CR_3, CR_5, CR_8, etc. measures may be computed but with different interpretations of the concentration levels).

The HHI measure is based on the total number and size distribution of firms in the industry. It is computed as the sum of the squares of the relative size of all firms in the industry. The index is used, for example, in the Antitrust Division of the U.S. Department of Justice as an administratively criteria to screen horizontal mergers that may warrant further examination for their effects on competition[15]. The Agency divides the spectrum of market concentration as measured by the HHI into three regions that can be broadly characterised as: (i) unconcentrated (HHI below 1000), indicating lack of competition concerns; (ii) moderately concentrated (HHI between 1000 and 1800), indicating some competition concerns; and (iii) highly concentrated (HHI above 1800), indicating serious competition concerns.

There are other measures of concentration, such as the *Lorenz Curve, Gini Coefficient, Inverse Index* and *Entropy,* which have different theoretic significance but are not as frequently employed in competition policy analysis as the HHI and the CR_4. Of all the concentration measures, the HHI is generally considered to be a more superior measure in that it takes into account the market shares of all firms in the industry. It also gives proportionately greater weight to the market shares of the larger firms, in accord with their relative importance in competitive interactions[16].

The Table below gives the example of the application of market shares and calculation of concentration levels in an industry, based on the banking services sector of Zimbabwe. The market shares in the example are based on an aggregate of key measurements and services offered by commercial banks in Zimbabwe, such as total assets, total advances, demand deposits, time deposits and savings deposits.

Market Shares and Concentration in the Zimbabwean Banking Services Sector

Banking Institution	**Market Share**	**Concentration**	
		HHI	***CR_4***
Barclays Bank	19.4%	376	19.4
Stanbic Bank	17.0%	289	17.0
CBZ Bank	14.5%	210	14.5

15 *Horizontal Merger Guidelines,* U.S. Department of Justice and the Federal Trade Commission, Washington D.C., April 1997.
16 Ibid.

ZB Bank	11.7%	137	11.7
Standard Chartered Bank	10.2%	104	-
Kingdom Bank	7.5%	56	-
Agribank	4.2%	18	-
NMB Bank	3.9%	15	-
ZABG Bank	3.2%	10	-
First Banking Corporation	2.5%	6	-
MBCA Bank	2.4%	6	-
Premier Bank	2.3%	5	-
Metropolitan Bank	1.2%	1	-
Totals	**100%**	**1233**	**62.6**

The above shows that the banking services sector in Zimbabwe, with an HHI of 1233, is moderately concentrated, indicating some competition concerns. The CR_4 of 62.6% confirms the HHI assessment. In a case involving abuse of dominance by Barclays Bank, the bank's relatively high market share of 19.4% could confirm its dominance, depending on how dominance is defined in the respective country's competition law. Metropolitan Bank with a small market share of 1.2% would definitely not be dominant in that relevant market, and any case of abuse of dominant position against the bank would fall on that point alone. In a case involving horizontal merger, the merger between Barclays Bank and Stanbic Bank, the two largest banks in the relevant market, or between Barclays Bank and any other bank in the relevant Bank, would raise serious competition concerns.

Entry Conditions

In addition to measuring the competitiveness of an industry by the number of firms or some measure of concentration, an equally important factor in competition analysis is the ease with which entry can take place. Entry conditions play an important role in determining concentration since the number of active firms in an industry is partially determined by the cost of entry. A barrier to entry is best defined as an additional or significantly increased cost or disadvantage that a new entrant must bear as a condition of entry. Entry conditions also determine the extent of potential competition – it is generally believed that a credible threat of entry induces active firms to compete vigorously.

Barriers to entry can be considered as the major causes and sustenance of monopoly situations and dominant positions, since they constitute conditions or behaviour that restrict the mobility of capital in and out of markets. Empirical study has shown that monopolies or dominance can only continue to exist if there are barriers to entry. If the barriers are high, market power is possible, and if they are low, new entrants can be counted on to restore competition balance.

Barriers to entry can either be structural or behavioural. Structural barriers are those that are due solely to conditions outside the control of market participants. Behavioural barriers are those erected by market incumbents to protect themselves from entry.

Structural barriers mainly consist of activities of Governments and regulators, as well as sunk costs. Sunk costs are those costs that the firm cannot avoid by withdrawing from the market – they are thus investments that are fully committed to the market once made and that have continuing value only if left in that market. Other structural barriers include: (i) absolute cost advantages (e.g., those resulting from access to key natural resources, superior human resources, etc.); (ii) economies of scale (when unit costs of production fall with increasing output); (iii) large capital requirements; and (iv) network industries (i.e., those industries in which firms that are frequently competitors share some critical common facility, e.g., in telecommunications and transportation).

Of the structural barriers to entry, regulatory barriers are the most common and effective. They therefore need to be discussed in more detail. Governments interfere with entry in several ways, some intentional and some not. Some regulatory barriers are explicitly directed at blocking or limiting entry. Thomas Ross (1999)[17] noted for example that many transportation markets have historically had entry regulations that only allows limited numbers of entrants. Also, if it is necessary to obtain a special permit or license to operate in a particular market, and securing such a permit is costly or difficult, or impossible, it is less likely that there will be new entrants. A classic example of Government policies that favour incumbent sellers at the expense of potential entrants is in international trade. Potential entrants from other countries are frequently blocked from entry by tariffs, quotas or other nontariff barriers. However in many cases regulations that are adopted for reasons unrelated to entry or competition still limit the attractiveness of entry. Health, safety and environmental rules and laws that govern business operations are examples of such regulations.

Behavioural barriers to entry come in various forms, including: (i) limit pricing (pricing so low but still above average cost that, given the economies of scale in a market, there would be no room for an entrant if it believed the incumbent would maintain its pre-entry level of output after entry); (ii) predatory pricing (setting prices so low and below marginal cost that they could be profitable only if they induce exit followed by substantially higher prices thereafter); (iii) foreclosure and exclusion (threatening new entrants when the entrant needs inputs available only from a supplier vertically related (by contract or integration) to its competitor); and (iv) excess capacity (the incumbent firm expanding production in order to meet increased demand or create a glut and dampen the price when there is threat of entry).

Thomas Ross (1999)[18] discussed various structural and behavioural barriers to entry, as summarised in the Table below:

Structural Barriers	**Behavioural Barriers**
• Regulatory barriers include explicit barriers represented by required permits or licenses (or both) and by tariff and nontariff barriers to trade. Many indirect regulatory barriers deter entry only as a by-product of some other regulatory activity. Most often these regulations have the effect of conferring such as when environmental regulations are tougher on new plants, or when safety regulations force firms to make larger sunk investments in safety equipment or training. • If entrants do not have access to the same inputs and technology at the same prices as incumbents, they will suffer an absolute cost disadvantage, which will hurt their ability to compete and reduce	There are a number of issues to consider in determining behavioural barriers: • How will the incumbent respond to entry? Is there any reason to believe it will be particularly aggressive, even predatory? Does it have a reputation for toughness? Does it have reason to build such a reputation – that is, does it want to use this market to send a signal to other markets? Has it been making threats to potential entrants? Can the incumbent target price reductions to hurt the entrant at a lower cost to itself? Is the incumbent contractually committed to maintain its output through meeting-

[17] Thomas Ross, "Barriers to Entry", in *A Framework for the Design and Implementation of Competition Law and Policy,* The World Bank, Washington D.C., and OECD, Paris, 1999.
[18] Ibid.

their incentive to enter. Absolute cost differences are more likely to be found in economies without relatively competitive input markets. There are many possible sources of absolute cost advantages including ownership of unusually productive natural resources by incumbents (for example, the richest mines, the most fertile farmlands) and the possession of specialised human capital and intellectual property that is not easily duplicated. • Sunk costs may be the most frequently important barrier to entry, at least in industrial economies. Sunk costs can come in the form of specialised machinery, buildings, intellectual property, and human capital, and of expected start-up losses. Sunk costs, like all barriers, must be measured relative to the prospective gains from successful entry. • When capital markets are not perfect, the level of capital investment required to enter at a minimum viable scale or larger can be a barrier to entry. • Because they can point to large capital requirements or substantial sunk costs (or both), large economies of scale, which necessitate large-scale entry, will also be important in predicting the reaction of incumbents to entry. Although incumbents might be inclined to accommodate small-scale entry, they might be more threatened by large-scale entry, particularly if the market is not growing. In such a case the incumbents might be expected to respond more aggressively.	competition clauses? And, importantly, does the incumbent have the excess capacity necessary to meet market demand at lower prices? • Is advertising important in this market? If so, is there any reason to believe that the entrant will have a more difficult time advertising effectively than the incumbent? • Are there vertical restraints in the market that will make entry more difficult? For example, are all the customers tied up in exclusive contracts with existing sellers, and how long are these contracts? Do incumbents tie the purchase of this good to the purchase of some other that they control and for which there is no competition? Similarly, are suppliers of some critical input committed to the incumbents and not free to supply an entrant? • Are there strategies, such as raising rivals' costs, available to the incumbents that they could use to encourage an early exit?

According to Viscusi, Vernon and Harrington Jr. (1998)[19], defining the relevant set of entry conditions has proven to be a difficult and controversial subject in industrial organisation, but there are some questions one needs to ask in order to assess entry conditions, as follows: (i) How many prospective firms have the ability to enter in a reasonable length of time? (ii) How long does it take to enter this industry? (iii) How costly is entry? (iv) Will a new firm be at a disadvantage *vis-a-vis* established firms? (v) Does a new firm have access to the same technology, the same products, the same information? (vi) Is it costly to exit the industry (since an entrant is uncertain as to whether it will succeed, the cost of exit can be an important factor in the original decision to enter)?

Among the matters that are likely to be barriers to entry are differences between incumbents and entrants with regard to[20]:

- costs of obtaining and complying with regulatory approvals;
- costs of establishing brand loyalties and reputations;
- other sunk costs;
- access to raw materials, technology or capital;

[19] Ibid.

[20] John Preston, "Defining Markets", a presentation at the Industry and Trade Competition Commission Staff Training Seminar, Harare, December 2000.

- access to distribution;
- expected incumbent responses; and
- access to 'essential facilities'[21].

Competition Case Investigation and Evaluation

Investigation or examination of a competition case must be as thorough as possible. The functions of a competition authority are of a *quasi judicial* nature and any competition decision or determination by the authority must be based on full and accurate investigation findings, otherwise the authority will open itself to frequent and costly litigation. The need to observe the rules of natural justice is also critical in investigating competition cases to ensure that every person whose interests are likely to be affected by the outcome of the investigation is given an adequate opportunity to make representations in the matter. Failure to observe the rules of natural justice could expose the competition authority to unnecessary legal challenges to its decisions.

Stakeholder consultations are therefore an essential part of competition analysis. The major stakeholders in any competition case, who must be interviewed and consulted, are the complainant(s) and the respondent(s) in the case of alleged or suspected RBPs[22] or the merging parties in the case of mergers and acquisitions[23]. Other stakeholders that need to be consulted include the major parties' customers, suppliers and competitors, as well as sector regulators and relevant trade associations. These have first-hand and expert knowledge of the affected industry or market, and the extent of competition in that industry or market. They are also useful in suggesting practical remedies to the competition concerns raised.

In many countries, competition legislation or regulations give useful guidelines on what should be taken into account in conducting a competition investigation. Zimbabwe's competition legislation, for example, provides that the competition authority in analysing a competition case should take into account the desirability of:

- maintaining and promoting effective competition between persons producing or distributing commodities and services in Zimbabwe; and
- promoting the interests of consumers, purchasers and other users of commodities and services in Zimbabwe, in regard to the prices, quality and variety of such commodities and services; and
- promoting, through competition, the reduction of costs and the development of new techniques and new commodities, and of facilitating the entry of new competitors into existing markets.

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[21] 'Essential facilities' are facilities that are characterised by, or closely associated with, natural monopoly.

[22] Complainants in restrictive business practices cases can either be the parties injured, or likely to be injured, by the practices in question (including sector regulators or any other interested parties) or the competition authority itself taking a proactive or preemptive action against the practice. Respondents are parties alleged or suspected to be engaged in the anti-competitive practices in question.

[23] The merging parties include the firms that are merging to form one entity or both the acquiring firm and the target firm.

The legislation also provides that the competition authority should regard a restrictive business practice as grossly anti-competitive if it restricts competition to a material degree, and is engaged in by a person with substantial market control over the commodity or service to which the practice relates. In the case of a merger, the transaction should be regarded as anti-competitive if it has lessened substantially or is likely to lessen substantially the degree of competition in the relevant market or has resulted or is likely to result in a monopoly situation.

Zimbabwe's competition legislation, like those of most other countries, therefore contains the *de minimus* rule, which effectively exempts small firms and enterprises from the application of the competition law[24]. This is a very important rule in competition analysis since it allows competition authorities to concentrate on those competition cases that have serious competition concerns, and not waste time and resources on cases that have little impact on competition.

For those RBPs that should be considered using the 'Rule of Reason' approach, the legislation lists those public interest and/or pro-competitive features of the RBP that should exempt it from being declared prohibited. These features are listed in the Table below:

Public Interest/Procompetitive Features of RBPs as Listed in the Zimbabwean Competition Legislation

Restrictive Practices	***Monopoly Situations***
The Commission should regard a restrictive practice as contrary to the public interest if it is engaged in by a person with substantial market control over the commodity or service to which the practice relates, unless the Commission is satisfied as to any one or more of the following: (a) that the restrictive practice is reasonably necessary, having regard to the character of the commodity or service to which it applies, to protect consumers or users of the commodity or service, or the general public, against injury or harm; (b) that termination of the restrictive practice would deny to consumers or users of the commodity or service to which the restrictive practice applies, other specific and substantial benefits or advantages enjoyed or likely to be enjoyed by them, whether by virtue of the restrictive practice itself or by virtue of the any arrangement or operation resulting therefrom; (c) that termination of the restrictive practice would be likely to have a serious and persistently adverse effect on the general level of unemployment in any area in which a substantial proportion of the business, trade or industry to which the restrictive practice relates is situated; (d) that termination of the restrictive practice would be likely to cause a substantial reduction in the volume or earnings of any export business or	The Commission should regard a monopoly situation as contrary to the public interest, unless the Commission is satisfied as to any one or more of the following: (a) that the monopoly situation, through economies of scale or for other reasons, has resulted in or is likely to result in a more efficient use of resources in any business, trade or industry than would be the case if the monopoly situation did not exist; (b) that the monopoly situation is or is likely to be necessary for the production, supply or distribution of any commodity or service in Zimbabwe, regard being had on the one hand to the resources necessary to produce, supply or distribute the commodity or service and, on the other hand, to the size of the Zimbabwean market for that commodity or service; (c) that termination or prevention of the monopoly situation would deny to consumers or users of any commodity or service, other specific and substantial benefits or advantages enjoyed or likely to be enjoyed by them, whether by virtue of the monopoly situation itself or by virtue of any arrangement or operation resulting therefrom; (d) that the monopoly situation is or is likely to be reasonably necessary to enable the parties to it to negotiate fair terms for the distribution of a commodity or service from a person who is not a party to the monopoly situation and who

24 The Competition and Fair Trading Act of Zambia also prohibits only those "agreements, decisions and concerted practices which have as their object the prevention, restriction or distortion of competition to an *appreciable* extent in Zambia" (Sec. 7(1).

trade of Zimbabwe; (e) that the restrictive practice is reasonably required to maintain an authorised practice or any other restrictive practice which, in the Commission's opinion, is not contrary to the public interest; (f) that the restrictive practice does not directly or indirectly restrict or discourage competition to a material degree in any business, trade or industry and is not likely to do so.	exercises complete or substantial control over the distribution of the commodity or service, or to a person who is not a party to the monopoly situation and who exercises complete or substantial control over the market for the commodity or service; (e) that the termination or prevention of the monopoly situation would be likely to have a serious and persistently adverse effect on the general level of unemployment in any area in which a substantial proportion of the business, trade or industry to which the monopoly situation relates is situated; (f) the termination or prevention of the monopoly situation would be likely to cause a substantial reduction in the volume or earnings of any export business or trade in Zimbabwe.

There is currently a big debate on whether competition analysis should be based on purely economic factors or should take into account other political and social policy objectives that go beyond improvements in economic efficiency. In some jurisdictions, particularly in developed countries, socio-economic considerations such as employment, domestic production, export earnings, etc., have little or no room to play in competition analysis. It should however be noted that competition policy cannot operate and exist in isolation to other socio-economic policies. There must be an effective interface between competition policy and other public policies if the policies are to assist each other in the meeting of their objective goals.

The above is of particular importance to developing countries in their quest to promote development using all public policies at their disposal. Competition policy, specifically merger policy, has been used in developing countries to increase the capacity of domestic firms to compete for export sales or increase domestic employment levels[25]. Merger review has also provided occasions for developing countries like Zimbabwe to impose conditions that promote foreign direct investment (FDI), development of local product brands, employment retention, and even indigenisation of the economy.

South Africa's competition legislation and experience provides a representative example of the influence of socio-political considerations in the implementation of competition policy. The preamble to the Competition Act of South Africa lists a number of public interest objectives, particularly the need to promote correct the previous apartheid regime's discriminatory practices against the black people, that must be met by that country's competition law as shown in the Box below:

Preamble to the Competition Act of South Africa

The people of South Africa recognise:

That apartheid and other discriminatory laws and practices of the past resulted in excessive concentration of ownership and control wihin the national economy, inadequate restraints against anti-competitive trade practices, and unjust restrictions on full and free participation in the economy by all South Africans.
That the economy must be open to greater ownership by a greater number of South Africans.

[25] William E Kovacic, *Merger Enforcement in Transition: Antitrust Control on Acquisitions in Emerging Economies,* in University of Cincinnati Law Review, Vol. 66, No. 4, Summer 1998.

That credible competition law, and effective structures to administer that law, are necessary for an efficient functioning economy.
That an efficient, competitive economic environment, balancing the interests of workers, owners and consumers and focussed on development, will benefit all South Africans.

IN ORDER TO –

- provide all South Africans equal opportunity to participate fairly in the national economy;
- achieve a more effective and efficient economy in South Africa;
- provide for markets in which consumers have access to, and can freely select, the quality and variety of goods and services they desire;
- create greater capability and an environment for South Africans to compete effectively in international markets;
- restrain particular trade practices which undermine a competitive economy;
- regulate the transfer of economic ownership in keeping with the public interest;
- establish independent institutions to monitor economic competition; and
- give effect to the international law obligations of the Republic.

The need to promote and protect firms controlled or owned by 'historically disadvantaged persons' is therefore paramount in competition analysis by South African competition authorities, particularly in cases involving mergers and acquisitions.

Remedial Action

Remedial action against identified RBPs should be the end objective of effective competition analysis, and this should be part of, and based on, the competition authority's determination of the competition concerns analysed. Remedial action can come in the form of cease and desist orders, in the case of abuse of dominance cases, or conditions aimed at alleviating identified competition and public interest concerns, in the case of mergers and acquisitions.

It should however be noted that remedial action should not *always* be end objective of competition analysis since some competition cases can be dismissed for lack of competition concerns, or otherwise closed for lack of serious competition concerns. Mergers and acquisitions that are not likely to substantially reduce or lessen the degree of competition in the relevant market(s) should also be approved without any conditions.

Remedial action should also not only await the conclusion of a competition investigation. It is common practice for competition authorities to negotiate with respondents in competition cases, at any time after identifying a competition concern, arrangements aimed at ensuring the discontinuance of restrictive practices that exist or may come into existence, or terminating, preventing or altering any merger which exists or may come into existence. Such arrangements are usually embodied in Undertakings as consent agreements.

Remedial orders that competition authorities can make on identified RBPs are varied and depend on the seriousness and effect of the identified anti-competitive practice. For example, Zimbabwe's competition legislation provides for the issuance of the following remedial orders:

Remedial Orders Provided in the Zimbabwean Competition Legislation

Orders Against Restrictive Practices	Orders Against Anti-competitive Mergers

(a) Prohibiting any person named in the order, or any class of persons, from engaging in the restrictive practice or from pursuing any other course of conduct which is specified in the order and which, in the Commission's opinion, is similar in form and effect to the restrictive practice. (b) Requiring any party to the restrictive practice to terminate the restrictive practice, either wholly or to such extent as may be specified in the order, within such time as is specified in the order. (c) Regulating the price which any person named in the order may charge for any commodity or service (provided that the Commission shall not make any such order unless it is satisfied that the price being charged by the person concerned is essential to the maintenance of the restrictive practice to which the order relates). (d) Prohibiting any person named in the order, or any class of persons, from notifying persons supplying any commodity or service of a price recommended or suggested as appropriate to be charged by those persons. (e) Generally, making such provision as, in the opinion of the Commission, is reasonably necessary to terminate the restrictive practice or alleviate its effects. (engagement in those restrictive practices that are referred to as "unfair business practices" in the Act (i.e., those that are *per se* illegal), attracts the imposing of fines and/or imprisonment).	(a) Declaring the merger to be unlawful, except to such extent and in such circumstances as may be provided by or under the order, to make or to carry out any agreement or arrangement which is specified in the order and which, in the Commission's opinion, will lead to or maintain the merger. (b) Prohibiting or restricting the acquisition by any person named in the order of the whole or part of any undertaking or assets, or the doing by that person of anything which will or may result in such an acquisition, if the acquisition is likely, in the Commission's opinion, to lead to a merger. (c) Requiring any person to take steps to secure the dissolution of any organisation, whether corporate or unicorporated, or the termination of any association, where the Commission is satisfied that the person is concerned in or a party to the merger. (d) Requiring that, if any merger takes place, any party to that merger who is named in the order shall observe such prohibitions of restrictions in regard to the manner in which he carries on business as are specified in the order. (e) Generally, making such provision as, in the opinion of the Commission, is reasonably necessary to terminate or prevent the merger or alleviate its effects. (in addition to the above, orders made in respect of a merger may provide for: (i) the transfer or vesting of property, rights, liabilities or obligations; (ii) the adjustment of contracts, whether by their discharge of the reduction of any liability or obligation or otherwise; (iii) the creation, allotment, surrender or cancellation of any shares, stocks or securities; and (iv) the formation or winding up of any undertaking or the amendment of the memorandum or articles of association or any other instrument regulating the business of any undertaking).

The remedies, whose primary goal should be to remove the anti-competitive threat to the marketplace, can be of a structural or behavioural nature. *Structural remedies* are those aimed at changing or altering the structure of the market, such as ordering divestiture or full dissolution or breakup of a firm. *Behavioural remedies* are those aimed at regulating or modifying the future conduct of the offending firm to prevent or control the identified anti-competitive practices.

Structural remedies are however generally preferred to behavioural remedies. They are found to be more effective in the long run, and do not require continuing oversight or regulation by the competition authority. In requiring continuing oversight by competition authorities, behavioural remedies divest the authority's scarce resources from more important matters such as investigating and analysing new competition cases.

A CASE STUDY

The competition concepts and principles discussed in this paper can be illustrated in a real life competition case handled by the Zimbabwean competition authority involving the merger of Rothmans of Pall Mall (Zimbabwe) Limited and British American Tobacco (Zimbabwe) Limited. The outline of that case is given in the Box below:

Merger of Rothmans of Pall Mall (Zimbabwe) Limited and British American Tobacco (Zimbabwe) Limited

In January 1999, British American Tobacco Plc of the United Kingdom announced that it had reached an agreement with the main shareholders of Rothmans International, Compagnie Financiere Richemont AG of Switzerland and Rembrandt Group Limited of South Africa, to merge their international tobacco businesses. Subsequent to the completion of the international merger, Rothmans of Pall Mall (Zimbabwe) Limited in September 1999 applied to the Commission in terms of section 35 of the Competition Act [*Chapter 14:28*] for authorisation to acquire the entire issued share capital of British American Tobacco Zimbabwe Limited (BAT). Even though Rothmans of Pall Mall (Zimbabwe) Limited was the acquiring party, the merged entity was to be named British American Tobacco (Zimbabwe) Limited.

The relevant product market was identified as *manufactured cigarettes*, and the geographic market as the whole of Zimbabwe. That market was found to be a duopoly, with the two merging parties being the only manufacturers of cigarettes in Zimbabwe. The market naturally was highly concentrated, with Rothmans of Pall Mall (Zimbabwe) commanding a 70% share of the market and British American Tobacco (Zimbabwe) the other 30% share, resulting in a high HHI of 5800. Entry barriers in the cigarette manufacturing industry were found to be formidable. Besides the high capital-intensive nature of the industry and sunk costs in terms of R&D and advertising, there was excess capacity in the industry that discouraged new entrants.

The examination of the merger found that a monopoly situation was going to be created in the cigarette manufacturing industry. It was however also submitted and proved that the market was failing to contain two large cigarette making companies, and that the target firm, British American Tobacco (Zimbabwe) was facing imminent closure. A monopoly situation in the industry was therefore going to result from that company's eventual exit from the market even if the Commission did not authorise the merger. It was also established that the two merging parties had a long history of cooperation in the manufacture and distribution of their different brands of cigarettes, and thus effective competition between the two companies was not intense even before the merger.

A number of public interest benefits were also found to likely result from the merger. The merger would prevent the disappearance from the market of British American Tobacco (Zimbabwe)'s local *Kingsgate* and *Berkeley* cigarette brands, which were popular with the consumers. The monopoly situation to be created in the cigarette manufacturing industry was also perceived, through the attainment of economies of scale, to result in more efficient use of resources and stabilisation of cigarette prices on the local market, as well as result in increased export of cigarettes to neighbouring countries such as Zambia and South Africa.

The Commission therefore approved the merger with the following conditions aimed at alleviating the possible adverse effects of the monopoly situation to be created:

- all the identified surplus cigarette making equipment at the BAT premises in Harare should be disposed of at fair and realistic prices to third parties interested in entering the cigarette making industry within a reasonable period of time; and
- upon consummation of the merger, the ex-factory price of all the cigarette brands being produced by the merging parties should not be higher than those charged immediately prior to the merger, with any future price increases being justified to the Commission before implementation as long as the monopoly situation created in the cigarette manufacturing industry remained in existence.

In the above case:

- The product and geographic aspect of the relevant market was identified as the manufacturing of cigarettes in Zimbabwe. The merging parties had wanted to enlarge the product market to include snuff and loose tobacco but the Commission narrowed down the market to manufactured cigarettes on the basis of consumer survey that showed that snuff and other tobaccos were not close substitutes to manufactured cigarettes, at least in Zimbabwe.

- The relevant market was found to be a duopoly, and therefore highly concentrated, consisting of only the merging parties with market shares of 70% and 30% respectively, resulting in a very high HHI of 5800.
- Entry barriers in the cigarette manufacturing industry were found to be formidable, and consisted of high capital requirements, sunk costs and excess capacity.
- Even though it was found that the merger was going to create a monopoly in the cigarette manufacturing industry of Zimbabwe, it had a number of efficiency and public interest features. It was going to prevent the exit from the market of a failing firm, and thus save jobs, and the disappearance of certain popular brands of cigarettes from the market. It was also going to result through economies of scale in more efficient use of resources and increased export earnings.
- The merger was therefore approved on certain conditions aimed at alleviating the possible adverse effects of the monopoly situation to be created. The conditions contained remedies of both a structural and behavioural nature. The structural remedies involved partial divestiture (i.e., disposal of surplus cigarette making machinery and equipment to third parties interested in entering the industry), while the behavioural remedies involved the Commission regulating the prices of the monopoly's cigarette products as long as the monopoly situated created in the industry remained in existence.

CONCLUSION

Competition analysis is a critical element in the enforcement of competition law, and thus promotion of competition in any market. Competition enforcement is however not the only method at the disposal of competition authorities of promoting competition. Equally important is competition advocacy (i.e., ensuring the recognition of the importance of competition in other public policies and building public awareness of competition policy), which is effective in creating a culture of competition.

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