From the Bottom Up

Capacity Building on Competition Policy in Select Countries of Eastern & Southern Africa

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Currency & Exchange Rate			
Country	**Currency**	**Currency Code**	**Exchange Rate**
Botswana	Pulas	BWP	1US$=6.169BWP
Ethiopia	Birr	ETB	1US$=8.871ETB
Malawi	Kwacha	MWK	1US$=139.095MWK
Mauritius	Rupee	MUR	1US$=32.56MUR
Mozambique	Metical	MZN	1US$=25.193MZN
Namibia	Dollar	NAD	1US$=7.066NAD
Uganda	New Shilling	UGX	1US$=1,743.00UGX

Source: http://www.xe.com/
Exchange Rates as of February 27, 2007

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Acronyms

7Up3 Project	Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa
ACP	Anticompetitive Practices
AHaECoPA	AHa Ethiopian Consumer Protection Association
BCM	Banco Comercial de *Moçambique*
BMC	Botswana Meat Commission
BPC	Botswana Power Corporation
BPoA	Brussels Program of Action
BoB	Bank of Botswana
BoI	Board of Investment
BOBS	Botswana Bureau of Standards
CA	Competition Authority
CAMA	Consumer Association of Malawi
CLP	Competition Law and Policy
COMESA	Common Market for Eastern and Southern Africa
CSOs	Civil Society Organisations
CUTS C-CIER	CUTS Centre for Competition, Investment & Economic Regulation
DFID	Department for International Development, UK
EAC	East African Community
EPZs	Export Processing Zones
ESA	Eastern and Southern Africa
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNP	Gross National Product
IFC	International Finance Corporation
IMF	International Monetary Fund
IPRs	Intellectual Property Rights
LDCs	Least Developed Countries
M&As	Mergers & Acquisitions

MDG	Millennium Development Goal
MFIs	Micro-finance Institutions
MoUs	Memorandum of Understandings
NGOs	Non-governmental Organisations
NORAD	Norwegian Agency for Development Cooperation, Norway
NRG	National Reference Group
NTBs	Non-tariff Barriers
OFT	Office of Fair Trading
PPP	Purchasing Power Parity
QRs	Quantitative Restrictions
RBPs	Restrictive Business Practices
R&D	Research and Development
SADC	Southern African Development Community
SACU	Southern African Customs Union
SAP	Structural Adjustment Programme
SEZ	Special Economic Zone
SIDS	Small Island Development States
SoEs	State-Owned Enterprises
SMEs	Small and Medium-sized Enterprises
SMMEs	Small, Medium and Micro Enterprises
UCC	Uganda Communications Commission
UNCTAD	United Nations Conference on Trade and Development
USAID	United States Agency for International Development
UTPs	Unfair Trade Practices
WB	World Bank
WTO	World Trade Organisation

Foreword

An effective competition policy is one of the essential market regulatory mechanisms, which ensures that countries benefit from the process of trade liberalisation. More and more developing and least developed countries are waking up to this reality either through a process of introspection, as an outcome of a peer review process or due to external pressures. Adoption of competition policy and law in the eastern and southern African region (represented by the COMESA countries) has been a relatively recent phenomenon, mostly initiated in late 1990s.

The Common Market for Eastern and Southern Africa (COMESA) was founded in 1993 as a successor to the Preferential Trade Area (PTA) for Eastern and Southern Africa (ESA), which was established in 1981. Since inception, COMESA has made substantial progress towards its aim of developing into a Customs Union, especially so by launching a Free Trade Area (FTA) in the year 2000. Article 55 of the COMESA Treaty is dedicated to "Competition" and makes it imperative for Member States to prohibit practices that retard free and liberalised trade; and prevent, restrict or distort competition in the common market. The treaty required the Council (of Ministers of the Common Market) to frame regulations to regulate competition in the Member States. This regulation (COMESA Competition Policy and Regulation) was adopted by the Council in 2004, and COMESA has been actively working towards the establishment of the COMESA Competition Commission to implement these regulations.

Other regional blocs like the East African Community (EAC), Southern African Development Community (SADC), and the Southern African Customs Union (SACU) have progressed considerably towards evolving regional competition legislations for their members as well.

While such advances are welcome, given international economic relationship between the countries in the region has enhanced manifold in recent times, regional authorities and governments would have to be extremely cautious while implementing these regional instruments. Such caution would be particularly necessary in cases that involve more than one member countries.

Current members of COMESA include Angola, Burundi, Comoros, D.R. Congo, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seycelles, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. A majority of these Member States either do not have a competition law at all, or have a juvenile competition regime, which is only starting to emerge as a functional economic institution in the country.

For the regional competition legislations to be able to fulfill their mandate of curbing practices that restrict, prevent or prohibit competition in the region, it would be necessary to strengthen the member countries' competition regimes. This poses various kinds of challenges for the governments, who would require considerable development support and technical assistance from the international community to overcome capacity constraints. In addition to the efforts being made by the national governments, intergovernmental organisations and donors to develop institutions for effective implementation of national competition legislations in ESA, there is an urgent need to simultaneously develop national constituencies (various groups like – academia, media, consumer organisations, regulatory agencies, NGOs, etc.) and to mobilise public support and opinion in favour of effective implementation of the domestic competition laws.

CUTS International has been addressing this 'need' in various ESA countries through its initiatives on Competition Policy and Law – which combine the elements of research, advocacy and capacity building. Thus far, CUTS has undertaken projects in 11 countries including: Botswana, Ethiopia, Kenya, Malawi, Mauritius, Mozambique, Namibia, South Africa, Tanzania, Uganda and Zambia.

CUTS most recent endeavour in this respect, entitled, "Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa", which is a sequel to an earlier project undertaken in four countries of the region (Kenya, South Africa, Tanzania and Zambia) covers seven countries (viz., Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia and Uganda). This project referred to as the 7Up3 project has been successful in creating pioneers of competition research and advocacy among the civil society in the region.

The initiative has also been able to meet its goal of generating interest in certain stakeholder groups to engage in national issues related to competition, and assist in the process of evolution, development and implementation of national competition regimes. One critical element that this project has addressed relates to the 'capacity building' requirements of various stakeholders – which has been done by CUTS through national and regional level training workshops on competition policy and law implementation issues.

CUTS intends to continue strengthening the project countries' endeavour for evolving and implementing national competition regimes by extending its services for developing the capacity of those in civil society, business and the government who are interested and engaged on competition policy and law issues. CUTS would also continue pursuing its goal of mainstreaming competition into the national development discourse in the countries of ESA region – and not be limited to countries where it has worked before, but spread the awareness and understanding on the need for an effective competition regime all around and in other parts of the continent.

Rijit Sengupta
Centre Coordinator & Deputy Head
CUTS C-CIER

Preface

Experiences from across the world reveal that there are primarily two types of motivations behind the adoption of competition legislations – one, which is internally triggered and is in response to growing market inequalities; and two, which is imposed upon a beneficiary country by international lending institutions.

In most of the ESA countries, it has been observed that competition legislations were embraced by host governments in the, fulfillment of conditions imposed under multilateral / bilateral agreements.

As a result of this, many a times, the competition law developed is found to be toothless, and appear like a tokenism, or is far removed from the socio-economic-political realities of the host country. Further, officials of the competition authorities lack the 'know-how' and 'do-how' of implementation, and thus the process is procrastinated, or sometimes inappropriately sequenced. Governments are not able to garner support to enable effective implementation of competition laws, due to problems that stem from the lack of coordination between the competition authority (or, the department of the line Ministry responsible for competition policy implementation) and other government agencies / departments. As a result, anticompetitive practices continue unabated in various levels of the market and harm consumers and the economy equally.

The problem is compounded by a lack of awareness among people, and thus there is no pressure on the government either. On the other hand rent-seeking businesses act as a counter lobby to thwart implementation.

This understanding about competition regimes of ESA countries is an outcome of the research that CUTS has undertaken in partnership with civil society organisations in seven countries of the region during a two-year research and advocacy project. It was supported by the Norwegian Agency for Development Cooperation (NORAD), Norway and Department for International Development (DFID) UK.

This is the third project in a series of similar projects undertaken in the developing world of Africa and Asia. The first one: *7Up Project* was implemented in India, Kenya, Pakistan, South Africa, Sri Lanka, Tanzania and Zambia, while the second one: *7Up2 Project* was undertaken in Bangladesh, Cambodia, India, Lao PDR, Nepal and Vietnam.

CUTS International initiated this project entitled, 'Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa' (also referred to as the 7Up3 project) with the dual objectives of assessing the bottlenecks that prevent effective implementation of competition regimes in the project countries; and enhancing the capacity of multiple stakeholders to comprehend the benefits of competition policy and law, as a means to effectively implement national competition regimes.

The project countries: Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia and Uganda are at various stages of development and implementation of their competition regimes. While Ethiopia, Malawi and Namibia have competition laws and have recently established authorities to implement them, Mauritius is in the process of developing a new law. Botswana has embraced a competition policy, did an assessment of policy-induced hurdles, and is now in the process of drafting a law. The draft Competition Bill of Uganda is doing the rounds of the policy circle and the Ministry in-charge is expected to table the Competition Bill in the Parliament soon. Mozambique is quite keen to adopt a competition

policy, and has established a working group on competition policy to assist the Ministry of Trade in this endeavour.

Project activities were initiated in partnership with select civil society organisations in each of the seven countries. The CSOs pioneered competition research at the national level and engaged various stakeholders in the process of discussing the best way forward for operationalising a competition regime for consumer welfare and economic development. Gradually, the partners were able to get the government agencies and policy-makers interested in discussing competition issues by sensitising them of the ground realities of competition and consumer protection and familiarising them of the benefits that would accrue from developing an effective competition regime at the national level. Over the period of implementation of the project, ministries and competition authorities in the project countries have realised that they lack the capacity and experience necessary for implementing competition laws and have voiced their need for skills training on the subject.

It has been observed, that the need to develop and implement a healthy competition regime has been felt at the micro-level as an outcome of the research and advocacy work undertaken by the civil society in each project country, and has gradually permeated to the policy circuit in these countries – with a greater energy in some countries as compared to the others. Hence, the report bears the name - 'From the Bottom Up', indicating that the need for competition reform in the project countries has been inspired by an understanding that was transferred from the bottom up.

One approach that the project has followed for making civil society better comprehend the benefit of a healthy competition regime has been to trace the linkages between competition policy with the wider policy context of private sector development, economic growth and poverty reduction. This has been a hallmark of the project activities, both while undertaking research and also during the time of the national dialogues. The need for an effective competition policy and law has been linked to promoting consumer welfare and industrial democracy.

This report charts out the competition scenario in the seven countries and highlights the weaknesses that require to be addressed for operationalising competition regimes in them. Information contained in the report should form the backbone for subsequent national level interventions as far as competition and regulatory policy reform is concerned. It strongly recommends national governments to prioritise competition administration in the framework of their national development strategies to promote economic development as a means to reducing poverty and inequality.

Pradeep S Mehta
Secretary General
CUTS International

Chapter 1

Competition Administration in Eastern & Southern Africa: Taking the Right Steps

(Synthesis Report)

Introduction

Over 1980s and 1990s, most developing economies in the world, including those once committed to central economic planning, made great efforts in their progression towards evolving market-oriented economic policy regimes. In this agenda for reform of most of these countries, however, development of a comprehensive legal and regulatory framework did not receive adequate attention. This has often been considered to be one of the reasons that these reforms could not generate the desired outcomes. The situation has changed now, and an appropriate legal and regulatory framework, with competition policy and law as its integral part, is considered an essential requirement for proper functioning of a market-oriented economy.

It is well-recognised, nonetheless, that in order to achieve targeted policy objectives and to make the reforms succeed, competition laws and policies in developing countries must be well-adapted to their national development circumstances, taking into account all the local economic, social, and cultural dimensions, etc. and by no means be a copy or derivative fashioned on developed-country style. Nevertheless, the basic principles underlying a competition law remains more or less the same. Competition Laws are to be supported and promoted by efficient institutions, which are well-equipped with sufficient capacity and skills. Perhaps, the country specific differences can be reflected more in the realm of enforcement priorities rather than on the law itself.

Toward such policies and concomitant institutions, it is necessary, at the first instance, for developing countries to foster public acceptance as well as widespread participation and contribution of various national stakeholders into the policy-making process, and build up the capacities and skills of the [future] competition authority and complementary institutions. In the whole process, it is important for them to learn from their own experiences. Externally, sharing and comparing the learnings with other developing countries' experience will also help them to overcome the impediments for having an effective competition regime.

Strongly aware of the severe resource and capacity constraints that developing countries are facing in the path towards such a regime, CUTS Centre for Competition, Investment & Economic Regulation (CUTS C-CIER) has taken up the initiative, codenamed '7Up3 Project'. The current project is in the sequel to a similar project entitled '7Up Project' and '7Up2 Project'. The Project endeavours to accelerate the process towards a well-suited competition law and policy, in select developing countries in Eastern and Southern Africa, *viz*. Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia and Uganda; and advance the environment in which the law and policy can be better enforced through various research-based advocacy and capacity-building activities.

The 7Up Project – a research and advocacy project on competition regimes in seven developing countries that concluded in 2003, had been very successful in raising awareness and stimulating debate on these issues and help reforms in the project countries and beyond. The success of the 7Up Projects motivated CUTS to take up similar activities in other countries as well. The 7Up2 Project and the 7Up3 Project of CUTS are in response to this.

The 7Up3 Project is jointly supported by the Norwegian Agency for Development Cooperation (NORAD), Norway; and the Department for International Development (DFID), UK.

All 7Up3 Project countries are pursuing market-oriented reforms, which entail an explicit need for an effective competition policy and law. Given the local capacity and resource constraints, technical assistance is needed. The integration and co-operation process of these countries into regional and multilateral economic systems has underscored the need. Moreover, given the strong similarity and comparability between these countries as regards the level of economic development, the local socio-political contexts, etc., a comparative study and integrated advocacy-cum-capacity-building programme among them will be a practical approach to cross-fertilise and consolidate expertise and resources from the perspectives of developing countries, helping to

achieve synergies and contribute to policy and performance developments in the area of competition them. CUTS, as a developing country-based research-cum-advocacy group with rich experience on competition law and policy and a vast network of contacts in the developing world, can stand out as the optimal deliverer of the needed technical assistance to the project countries.

Taking up the mission of *promoting effective markets through competition policy & law*, the project envisions a long-term cause towards a competition culture for economic development. The main objective of this Project is to bring about development in competition law and policy and implementation performance in project countries *viz*. building up capacities of policymakers, law enforcers, civil society organisations (CSOs), consumer movements, and other stakeholders concerned. The Project advocates for the enactment of competition legislation where absent and the effective implementation of those in place. The Project is being implemented with the following immediate goals:

- build capacity on competition issues for the purposes of national, regional and international level policymaking; and
- raise awareness and stimulate discussion and debate on domestic competition issues among different national stakeholders.

and the following specific objectives:

- conduct an evaluation of the competition concerns, including their regional dimensions, facing these countries and the existing architecture for dealing with those concerns by identifying key constraints;
- develop the capacity of all the stakeholders including the policy makers, regulators, CSOs, particularly consumer groups, academics and media persons to understand and appreciate competition concerns from national as well as regional and international perspectives;
- provide inputs for drafting new legislation or reforming existing legislation, drawing on best practice from other countries;
- prepare and distribute materials on competition policy and law widely to raise national awareness;
- identify key stakeholders to form and institutionalise a national reference group (NRG) in each project country to organise meetings/trainings; and
- help build constituencies for promoting competition and consumer awareness by actively involving and building capacity of policy makers, CSOs, academics and media persons.

Implementation and management is structurally modelled after the 7Up1 Project, which has been recognised among relevant circles for its uniqueness as well as effectiveness in promoting similar objectives (OECD DAC prescribes donor agencies to promote the 7Up approach while engaging on competition policy an law initiatives in the developing world). This involves partnering with renowned research and advocacy institutions in the project countries and undertaking project activities by drawing from expertise of a Project Advisory Committee comprised of prominent experts on competition to provide guidance and consultations. CUTS, in addition to the pivotal role of co-ordinating and monitoring the project, is also providing the needed expertise to the beneficiaries for realising the targeted results. The Africa offices of CUTS based in Lusaka and Nairobi have been especially effective in this regard.

Methodology

Research and advocacy are two pillars of the Project. Research has been carried out in each country to identify the macro-economic and institutional context of competition and particular concerns and issues that arise. Every country has different competition concerns. For example, a land-locked mid-sized developing country like Ethiopia with a predominantly agrarian and poverty-stricken economy would have competition concerns, which cannot be the same of that of a small island country like Mauritius, which has a service-oriented and relatively more developed economy with agriculture playing a minor role. Thus, research is essential to formulate the advocacy agenda as well as the capacity building and training requirements.

Country research partners have conducted research activities in Project countries, based primarily upon secondary information, empirical/case study and some field surveys. Some interviews, scanning of media reports, and regular interactions with government officials have also been carried out in this regard.

The objective of the research was to collect information on market players and sources of competition failures in several markets (e.g. rivalry and pricing policies, innovation, and structural and behavioural impediments to competition). Efforts were also made to identify indicators that are traditionally used in the literature from which one can infer on market power such as levels of market concentration, price, mark-ups etc. This output has been complemented by a review of the existing legal and institutional framework to foster competition, including regulatory measures, consumer protection measures, etc. For countries where a competition law or a draft competition law has been formulated, it has been analysed against the wider current context, concerns and needs.

The most important concrete outputs are the country reports for the selected countries and the synthesis report. The country reports deal with various aspects of competition issues, specific to the countries and thus, will become an important guide for designing and/or implementation of the competition policy and/or law in those countries. They would also prove helpful to other groups of stakeholders not involved in the policy-making and its implementation, but involved in the process of facilitation.

The synthesis report takes a broader approach focusing on specific aspects rather than incidents, which helps understand the issues in perspective. It also deals with issues of regional policy-making wherever appropriate, but is more helpful to national level policymakers, not only in the project countries, but also in other developing countries.

The 7Up3 Project is segregated into two stages. While Stage-I deals in conducting research and initiating dialogues on national competition policy issues, Stage-II comprises of advocacy and training activities.

This Report: A Synthesis

This report contains an analysis and synthesis of the information gathered and research done during the implementation of the Project. The main sources of information for this report are the individual country reports, and the deliberations in the NRG meetings, and the review meeting. However, other secondary sources have also been widely consulted. Whenever felt appropriate, references have been made to experiences of other countries as well.

The rest of this report is divided into seven chapters. Chapter Two provides a socio-economic overview of the project countries and points out the differences and commonalities within the group. Chapter Three focuses on the similarities and differences among project countries in terms of market structure and nature of competition therein. Chapter Four presents an overview of regulatory mechanisms of Project countries and provides a comparative analysis across countries, focusing on critical issues like privatisation, power and autonomy of regulators etc. Chapter Five provides a comparative view across Project countries on the prevalence of most common anticompetitive practices and the way they have been dealt with. Chapter Six gives a brief account of the perspectives and perceptions of Project countries' national stakeholders on competition policy and law, the prevalence of anticompetitive practices, the desired content of the law and policy, as well as desired structure and power of the competition authority, etc. Finally, chapter Seven examines the current status of development as regards competition policy and law at national and regional levels and on that basis provides some recommendations to take care of existing and potential competition concerns.

The Political Economy Context

Since competition policy and law aims to create and protect a competitive environment in the market, they have to necessarily work in conjunction with the political, economic and social background of a particular country, because their combination constitute the competitive structure of the market. Therefore, it is argued that harmonisation and linkages between competition law and other government policies are essential for meeting the objectives of CPL. The manner in which an optimal interface between competition law and other policies can be achieved remains a debatable issue.[1] Nevertheless, it would be useful to look into the political economy and public policy context of the 7Up3 countries.

The 7Up3 countries have a number of common features as well as dissimilarities. Among the seven countries, four are designated as least developed countries (LDCs), while three are developing. It includes the third largest (populated) country of Africa, as well as one of the smallest countries, Mauritius. Moreover, while Ethiopia with a per capita gross domestic product (GDP) of about US$100 is one of the poorest countries of the world, Mauritius, with a per capita GDP in excess of US$4000 is the richest country in Africa.

Three of the countries, Ethiopia, Malawi, and Uganda, have a history of command and control type one-party rule; while one country, Mozambique has a history of protracted civil war and large-scale destruction. Two of them, Botswana and Mauritius have shown vibrant democracy, political stability and are among the best-governed countries in Africa, since their independence in the 1960s. They also happen to be the richest countries in the continent. Namibia is a young nation, having acquired freedom as late as in 1980. Since then, however, the country has been governed with functional democracy, political stability and respect for civil rights. It is also the third richest country in the 7Up3 group, though much behind Mauritius and Botswana.

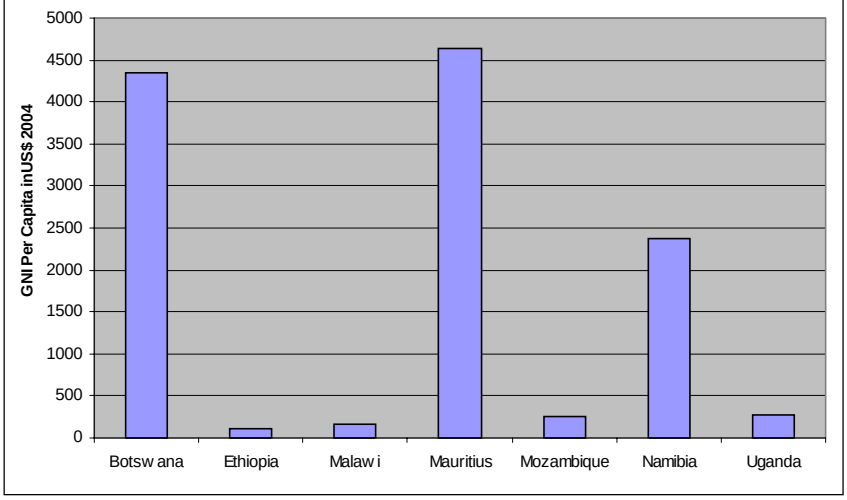
Four countries, Botswana, Ethiopia, Malawi and Uganda are landlocked, while one is an island nation. Two of them, Ethiopia and Malawi are largely hilly, while deserts cover Botswana and Namibia. Ethiopia also has its share of desert. Uganda is possibly the greenest of the lot, while Malawi and Mauritius are also relatively green, not due to forest cover, but due to cultivation. Malawi and Uganda are also well-

1 See World Bank and OECD, *A Framework for the Desig7n and Implementation of Competition Law and Policy,* 1998.

endowed with rivers and water bodies.

Area wise, all countries are rather small in size though there is enormous variation. Population wise too, there is large variation with Ethiopia having a population of more than 70 million, while Mauritians total just more than a million. Botswana and Namibia are also quite closer to Mauritius with population being near to two million. Malawi, Mozambique and Uganda come in between in an ascending order, and interestingly close to 10, 20 and 30 million, respectively. By the African Standard, Mauritius and Ethiopia are quite densely populated, though; population wise, Mauritius is the smallest country, while Ethiopia is the largest among the groups. Ethiopia adds about two million people to its population every year, which is equivalent to the Namibian population and almost double the Mauritian population.

Figure 1.1: GNI[2] Per Capita of 7Up3 Countries

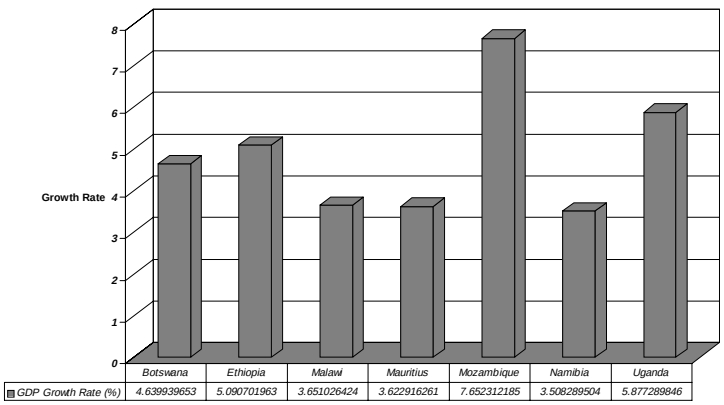


Though all are developing countries, there are wide variations in terms of per capita income. While Botswana, Namibia and Mauritius have per capita income of more than US$2000, the remaining others have less than US$300. However, one positive thing about the economic situation concerns their growth rates. The poorer countries are growing faster than the richer countries, except in the case of Malawi. Mauritius is the richest country, but is experiencing the lowest growth rate in the group along with Malawi. Mozambique has the highest growth rate in the group, which is more than seven percent. Even Ethiopia and Uganda are growing faster than Botswana, which has the highest growth rate among the richer three.

Economic Structure

As regards economic structure, the divergence is quite stark. The richer countries in the group, particularly Botswana and Mauritius, have an economic structure similar to most in the developed world, as their share of agriculture in GDP is only two and six percent, respectively. In Mauritius, the service sector accounts for as high as 64 percent of the GDP, while in Botswana it is 54 percent. Namibian structure is also quite similar with an agricultural share of 11 percent. At the other extreme is Ethiopia where agriculture accounts for 46 percent of the GDP and the share of industry is merely 10 percent, which is the lowest in the group. Botswana has the highest share of industry in the GDP, while Mauritius and Mozambique are the only other countries that have a share of industry exceeding 30 percent levels.

Figure 1.2: GDP Growth Rate 2002-2006 (in percent)



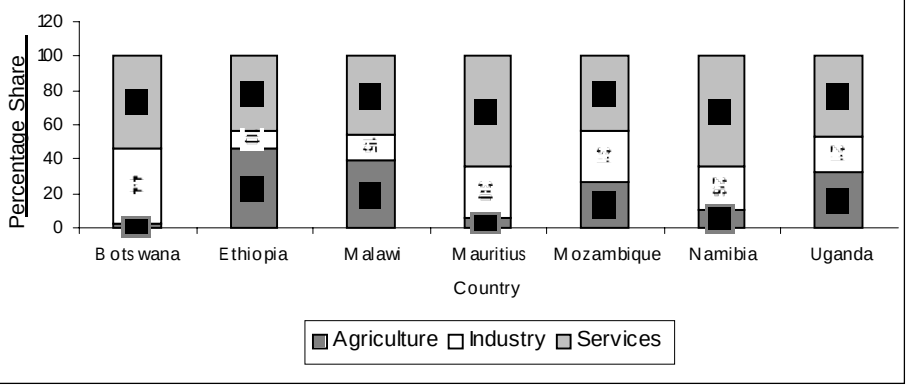
All of these countries have a history of significant state participation and intervention in economic affairs. For a brief period though, the state had absolute control in Ethiopia, Mozambique and Uganda. However, some of the other countries in Africa, who did not officially embrace socialism or communism, were not very different from the socialist/ communist countries as they also imposed tremendous state control, one-party rule, or even a President for life, and repression of political freedom – Malawi being an example. The reflection of this past can be seen in the economic structure of these countries even today, though all of them have adopted a market-oriented economic policy regime.

2 The term Gross National Income (GNI) is frequently used for the term Gross National Product (GNP).

Industrial Policy

In terms of industrial policy, most of these countries have undergone drastic changes over the last couple of decades or so. The winds of change started blowing from the mid 80s, though visible changes took place much later in some of these countries. The overall industrial environment became much more liberalised and setting-up a business much easier, though sometimes retarded by procedural delays.

Figure 1.3: Percentage Share in GDP(2004)



In most of these countries there are, generally, no licensing requirements as such except in Botswana and Mozambique. However, Botswana has an industrial licensing policy, which is too outdated. The licensing authority can refuse licence on grounds of a lack of technical skills or inadequate availability of raw materials. The country also has the practice of granting an exclusive licence. Licence can be refused on the ground of potential adverse impact on public interest as well. More strangely, in an industry where four or more manufacturing enterprises are already operating, licence can be given only after the written approval of the relevant minister. Though the government is considering some changes in this regard, the nature and extent of such changes are not yet clear.

In Mozambique also, licensing requirements are too many and the process is also quite lengthy, involving significant discretion and arbitrariness. In Mauritius, though, there is no licensing requirement as such; many of the industries are still reserved or highly regulated including being subject to price control.

It is, however, interesting to note that Botswana has one of the stricter licensing regimes for industries among the 7Up3 countries. It is well-known that after independence while most African countries adopted authoritarian command and control regimes, Botswana followed a different path with democracy and a relatively more market-oriented economic policy regime. Today, most of the countries have more or less reversed their economic policy be it under the pressure of international financial institutions or their own volition, while Botswana changed little and hence become a country with a relatively more regulated economic policy regime. It is also well known that Botswana is one of the best performers in Africa. Stable political and economic policy environment might have contributed to that.

Trade Policy

Except Ethiopia, all 7Up3 countries are founding members of the World Trade Organisation (WTO). Three of them, Botswana, Malawi and Mauritius had been members of its predecessor General Agreement on Tariffs & Trade (GATT) for decades, while the other three joined either in the late eighties or early nineties. Ethiopia is an observer of the WTO, and requested for an accession to the WTO circulated in January 2003, and the WTO General Council established a Working Party on February 10, 2003. But, Ethiopia has not yet submitted a Memorandum on the Foreign Trade Regime. The Working Party has not yet met. Ethiopia, is however, a member of the Common Market for Eastern and Southern Africa (COMESA).

All countries are, nonetheless, party to the European Union (EU)-African, Caribbean and the Pacific (ACP) arrangement. It is an ambitious co-operation programme between members of the EU and 71 countries of the ACP. It is based mainly on a system of tariff preferences, which give these countries access to the European market and special funds, which maintain price stability in agricultural and mining products. It started in 1975, when the first Lomé Convention was signed in Lomé, Togo. The Cotonou Agreement (signed in Benin, June 2000) succeeded the Lomé Agreement. One of the major differences with the Lomé Convention is that partnership is extended to new actors like civil society, private sector, trade unions, local authorities, etc. These actors will be involved in consultations and planning of national development strategies, provided with access to financial resources, and involved in the implementation of programmes. Countries are, however, engaged in negotiations for deeper integration within the Cotonou Agreement framework. Four countries of the group, Ethiopia, Malawi, Mauritius, and Uganda, are members of the COMESA. It, however, has two levels trade integration. Some countries of the COMESA have adopted a Free Trade Agreement (FTA)with deeper integration. Among the

four countries, Malawi and Mauritius are party to the FTA, while Ethiopia and Uganda are not.

Five countries in the group are members of another regional group of the region, the Southern African Development Community (SADC). These are Botswana, Malawi, Mauritius, Mozambique, and Namibia. SADC is a regional organisation of 14 Southern African countries.[3] Two of these countries, Botswana and Namibia are also members of the Southern African Customs Union (SACU), which have three other countries as members – all of which are also members of SADC. They are thus pretty closely integrated with South Africa, the largest market of the continent. Only one project country, Uganda, is a party to another regional grouping, the East African Community (EAC). The group is, however, relatively small as only two other countries, Kenya and Tanzania, are its members. Botswana is the only country in the project that has a bilateral FTA with another country of the region – Zimbabwe. Thus, Botswana seems to be the most open country in the project and Ethiopia, arguably, is the least open of the lot.

Competition Policy and Law

National Scenario

Though the importance of competition in the market is recognised by all countries in the 7Up3 project, it is only Botswana that has adopted a structured competition policy. But, it is yet to adopt a competition law. Elsewhere, all the other countries save for Mozambique and Uganda have already adopted a competition law, though only recently. Botswana, Uganda and Mozambique, are in the process of adopting a competition law. Uganda has already drafted a law and the same is being debated in the country. The exact status of Botswana and Mozambique is not yet clear, though they are believed to be in the process of adopting a competition law soon. However, with the adoption of a competition policy, Botswana has already indicated the broad contours of the forthcoming law.

Botswana: Botswana does not have a competition law. However, the need for a competition policy and law has long been recognised. The country has already adopted a competition policy. This will be followed by the development of the competition law.

The Economic Mapping Study, which informed the development of Botswana's competition policy, identified some laws that regulate entry into general business or entry into particular business sectors in Botswana. Obviously, these laws have a direct impact on the limits to competition in the market.

The Botswana Government has identified several legislations (54, to be precise) which would require revision to facilitate the adoption and effective implementation of the competition policy.

Ethiopia*:* The Ethiopian Government issued a Trade Practice Proclamation (No. 329/2002), in April 2002, which was proclaimed on April 17, 2003, under proclamation No. 329/2003, to promote competition in the domestic markets, is the competition law of the country. Its major objective was to secure a fair competitive process through the prevention and elimination of anticompetitive and unfair trade practices (UTPs), and safeguarding the interests of consumers, through the prevention and elimination of any restraints on the efficient supply and distribution of goods and services.

The salient features of the proclamation are generally meant for the prevention and elimination of anticompetitive practices in the market and protection of consumer interests. They include:

- any agreement that restricts, limits, impedes or harms free competition, in the process of production or distribution, is regarded as anticompetitive. It includes jointly fixing prices, collusive tendering as to determine market prices, market or consumer segmentation, allocation of quota of production and sales, refusal to deal, sell and render services, etc;

- in the course of commercial activities, any practice that aims at eliminating competitors through different methods is considered an unfair practice; and

- unfair imposition of excessively high or low selling price or service fee, or withholding supply or any pre-emptive behaviour to impede entry into markets; misleading commercial statements or notices; hoarding, diverting or withholding goods from normal trade channels; selling at a price that does not cover production cost to eliminate fair competition, etc, are regarded as abuse of dominance.

The proclamation also deals with other aspects related to competition, such as indication of prices of goods, labels on goods, distribution of basic goods, issuing and keeping receipts, etc.

Malawi: In the 1990s, the Malawi Government adopted a policy of economic liberalisation and formulated a competition policy. The competition

3 At present its 14 member states are Angola, Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.

Table 1.1: Landmark Changes in Economic Policies from 1985 Onwards		
Country	**Major Changes**	**Comments**
Botswana	The Industrial Development Act, 1998	Botswana's industrial development policy is broadly concerned with diversification of the economy. The provisions relating to exclusive manufacturing licenses under the Act are not seen to be compatible with the current international trading environment and, particularly, with Botswana's commitments under the WTO.
	The Companies Act, 1995	The Act is the key statute regulating market entry or the establishment of a business in Botswana. A review of the Act commissioned has been completed and a new law is in the offing, proposing drastic changes in the rules, regulations and procedures of incorporation and registration, management and administration of some companies, and shareholding and dealings in shares.
	The Trade and Liquor Act, 1993	Regulated entry into businesses for the supply of goods and services, mostly to end-users. In order to promote a vibrant, competitive trading environment, provision for setting up a tribunal or a competition regulator is very much felt.
Ethiopia	Change in Regime, 1991	As a result of the change in regime Ethiopia abandoned socialist economic system and made transition to a market-oriented economic system
	Industrial Development Strategy (Adopted since 2001)	Recognised private sector as an engine of growth and industrial development. Among the fundamental principles, emphasised on the coordination between government and the private sector and government's commitment towards creating enabling an environment for the private sector. Identified priority sub-sectors to drive the industrialisation process.
Malawi	The Integrated Trade and Industry Policy (ITIP), 1998	To increase competition in the utilities sector, policy encourages private sector participation in telecommunications and in the provision of electricity. However, provides for companies belonging to the same owners to collude rather than compete with each other.
	MPRS, 2002	Malawi Poverty Reduction Strategy (MPRS) recognised the private sector as the driving force for growth, with Government, NGOs and donors as facilitators of growth by helping establish an enabling environment.
Mauritius	Industrial Expansion Act, 1993	Schemes were set up under the Development Bank of Mauritius to finance projects that would not meet the lending criteria required by commercial banks at subsidised interest rates. Abolished custom duties on raw materials.

Table 1.1 (Contd): Landmark Changes in Economic Policies from 1985 Onwards		
Country	**Major Changes**	**Comments**
	SMIDO, 1994	The objective of Small and Medium Industries Development Organisation (SMIDO) is to provide direct support to small and medium enterprises in upgrading managerial, technical and marketing skills.
Mozambique	Economic Rehabilitation Programme, 1987	It was essentially Structural Adjustment Programme (SAP) of the International Monetary Fund (IMF) and the World Bank (WB). Later in 1989, it was renamed as Economic and Social Rehabilitation Programme (ESRP). The objective was to create a market-oriented economy and included stabilisation measures such as fiscal adjustments, monetary restraints and devaluation of the currency as well as price and trade liberalisation.
	Mozambican Industrial Policy, 1997	Provides no instruments that would allow the government to implement its policies and mobilise cooperation of the private sector.
Namibia	White Paper on Industrial Development of August 1992	Prevented further creation of monopolies by exposing industry to import competition. Limited Government intervention in the market to situations where it is meant to control monopolies, based on non-economic factors and unfair competition, such as dumping. A new industrial development policy is being worked upon.
	EPZ Act,1995	The Act provided for setting up Export Processing Zones (EPZs) for encouraging export of manufactured products. But due to regional restrictions on importation of products produced under the EPZs regime, the realities on the ground have been disappointing.
	National Policy and Programme on Small Business Development, 1997	The main objectives were promoting employment, reducing poverty and inequality, increasing growth and economic diversity. Another important objective was to help historically disadvantaged persons.
Uganda	SAP, 1981	The SAP failed to revive the economy amidst civil war leading to collapse of the programme and military coup.
	End of Civil War, 1986	New government established over a platform of national unity and broad-based economic reform.
	ERP, 1987	Economic Recovery Programme (ERP), a standard IMF / WB SAP with financial assistance from the IMF, the WB and bilateral donors.

Source: 7Up3 Country Reports (www.cuts-international.org/7up3.htm).

Table 1.2: Landmark Changes in Investment Policy from 1985 Onwards		
Country	**Major Reforms**	**Comments**
Botswana	National Competition Policy for Botswana, 2005	Provided a transparent, predictable and internationally acceptable regulatory mechanism, encouraging foreign direct investment (FDI).
	The Companies Act, 1995	A review of the Act provided a regulatory framework encouraging a competitive or less restrictive commercial environment facilitating domestic flow of foreign investment
	Reservation Policy, 1999	The policy restricts competition from foreign companies in some areas of commercial manufacturing, construction and services activities and also serves to reserve a few industrial activities for citizens.
Ethiopia	Investment Proclamation, 2003 (Amended several times)	Encouraged private sector investing in areas formerly reserved for the government – defence industries, hydropower generation, and telecommunications services. In reality, investment in telecommunications and defence must be in partnership with the Ethiopian Government besides nearly 200 state-owned enterprises (SoEs) have yet to be privatised.
Malawi	Investment Promotion Polices and Legislations, developed and adopted in early 1990s	Attracted foreign and domestic investment by offering fiscal and administrative incentives.
Mauritius	Investment Promotion Act, 2002	Net FDI flows were quite erratic past decade due to the rising labour cost hence, the Board of Investment (BoI) was set up in March 2001, to act as a one-stop-shop for all investments.
Mozambique	Legislations Allowing Establishment of Free Zones for Exports Oriented Investments	Administrative, legal and systemic barriers contributed in attracting investments that capitalise on abundant labour resources. Hence, generous investment incentives are being offered to attract foreign investments in the country.
Namibia	The Foreign Investment Act, 1990	Incentives given to entrepreneurs investing in manufacturing activities helped create environment towards attracting FDI. Act established the Namibian Investment Centre which together with the Offshore Development Company promoted EPZ regime and the general export-based industrialisation strategy of Namibia.
Uganda	Investment Code of 1991 Uganda Investment Authority (UIA), 1991	Harmonised all tax benefits under new incentives regime so that eligible investors enjoy the benefits directly without need for a certificate of incentives as long as they make investments of a capital nature. Among core functions of UIA is attracting FDI into the country and promoting investments by Ugandans. The role, however, changed to a one-stop centre for prospective investors.

Source: 7Up3 Country Reports (www.cuts-international.org/7up3.htm).

policy for Malawi was approved in 1997 with a broad policy objective in promoting economic efficiency and protecting consumer interests, comprising of three broad strategies namely lowering barriers to entry, reducing restrictive business practices (RBPs), and protecting the consumer.

The policy called for the enactment of a law that would make unfair business behaviour an offence and also protect the consumer by making a manufacturer or importer punishable for defective or sub-standard products or services. It also called for the establishment of a trade remedial system where civil and criminal suits for the purpose of recovery of damages suffered as a result of an uncompetitive or RBP could be dealt with. The Government's effort is evident from the resultant enactment of a Competition and Fair Trading Act (1998), which was brought into legal force on January 28, 2000, and the Consumer Protection Act (2003).

The Competition and Fair Trading Act (1988) aims at encouraging competition in the economy by prohibiting anticompetitive trade practices; providing for the establishment of the Competition Commission; regulating and monitoring monopolies and dominant firms; protecting consumer welfare; strengthening the efficiency of production and distribution of goods and services; securing the best possible conditions for the freedom of trade; and facilitating the expansion of the base of entrepreneurship, among others. A competition authority (Malawi Competition and Fair Trade Commission) has been established under the Act.
The Commission is primarily concerned with the establishment of conditions that enhance free and effective competition in the economy, to ensure that the anticompetitive practices do not create new barriers to trade or other forms pf protectionism. The competition rules set down minimum standards and allow enterprises to penetrate markets and establish themselves without barriers or restrictions thereby facilitating intra-market trade and cooperation. The competition law operates to protect the competitive process in the market rather than competitors.

The Commission is headed by 10 Board of Commissioners from the private sector, government agencies and ministries, labor unions, consumer associations and professional institutes. The Chair of the Board is elected from among the Board of Commissioners. The Minister of Trade and Private Sector Development appoints the Commissioners for a period of three years.

The Board of Commissioners is the decision-making council of the Commission. The secretariat investigates transactions and presents to the Board for decision-making.

The Board of Commissioners appoints the Executive Director, who is the Chief Executive Officer of the Commission. Four Directorates of Mergers and Acquisitions (M&As), Consumer Welfare and Education, Enforcement and Compliance and Finance and Corporate Services support him.

The Malawi Competition and Fair Trade Commission (MCFTC) Secretariat has been operational for a little over a year and has been engaged in developing internal capacity on technical issues related to competition administration. Simultaneously, some investigations have also been undertaken by the MCFTC, viz. in the pertoleum market.

Mauritius: The Competition Act was passed in the National Assembly, on April 01, 2003. The objective of the Act was to establish the legal framework for the control of RBPs, with a view to enhance competition in Mauritius, through measures designed to promote efficiency, adaptability and competitiveness in the economy. The purpose was to widen the range of customer choice in obtaining goods and services at fairer, more competitive prices. The Act covers four types of RBPs, namely abuse of monopoly power, collusive agreements, anticompetitive agreements, and bid-rigging.

The Act also establishes an Office of Fair Trading (OFT), a Competition Tribunal, and Competition Advisory Council. The main objectives of the Competition Advisory Council were to:

- advise the Minister on matters relating to RBPs, with emphasis upon consumer protection;
- promote activities to raise the awareness of the business community and consumers on competition and related matters;
- maintain effective communication with the business community and consumers' associations; and
- promote research in emerging trends in the field of fair competition and best business practices.

However, no regulations have been formulated yet, to set up the new institutions foreseen by the Act. Action was initiated to fill the post of Director of the OFT (Ministry of Commerce and Consumer Protection, December 2004). However, since then, the Government has changed after General Elections in the country. The new Government has decided to review the law and formulate a new law for the country. Two draft laws have been prepared quite interestingly, and it is observed that the choice of the law would depend on whether the Department of Consumer Protection is retained in the Ministry of Women's Rights, Child Development, Family Welfare and Consumer Protection, or shifted under the Ministry of Industry and Commerce. It is expected that Parliament would adopt the law in the first quarter of 2007.

Table 1.3: Landmark Changes in Trade Policy		
Country	**Major Reforms**	**Comments**
Botswana	WTO, 1995	Member of GATT Since 1987.
	SADC, 1992	Botswana has been a member of SADC since 1980. Its trade policy as regards SADC has been such which aims at progressive elimination of barriers to enable free movement of capital, labour, goods and services, which essentially encourages competition within the Botswana market.
	SACU agreement, 1970	Governs Botswana's tariff policy, allows it to impose a SACU duty on all goods coming from non-SACU members.
	Botswana-Zimbabwe Trade Agreement, 1988	Considered stringent, and is seen as restricting trade rather than facilitating trade and hence not encouraging competition as expected of a trade agreement.
Ethiopia	Comprehensive Trade Reform Programme, 1993	Dismantled quantitative restrictions (QRs), reduced the level and dispersion of tariff rates. Currently, quantitative import restrictions are applied only to used clothes, harmful drugs and armaments for security reasons.
	COMESA, 1993	Not a party to COMESA FTA.
	WTO	Requested for an accession to the WTO which was circulated in January 2003, and the WTO General Council established a Working Party on February 10, 2003.
Malawi	Key Trade Reforms 1988-1998	Key reforms, which substantially liberalised trade, included eliminating non-tariff barriers (NTBs), consolidating the tariff structure, reducing tariff protection, liberalising the export regime.
	WTO 1995	Member of GATT since 1964.
	The Integrated Trade and Industry Policy (ITIP), 1998	Supported use of import procurement *via* multilateral trade agreements, preferential trade agreements and regional as well as bilateral trade arrangements. Advocated use of countervailing duties and anti-dumping measures and safeguards to protect domestic manufacturers, producers and traders.
	COMESA, 1993	A party to COMESA FTA 2000.
	SADC, 1992	Trade Protocol calls for removal of intra-regional tariffs by 2008 except in 'sensitive products'.
Mauritius	Import Liberalisation, 1986-88	Phased reduction in external tariffs caused domestic producers to face more competition from imports.
	Import Liberalisation, 1991	Import liberalisation and reduction of protection for local firms started with the progressive dismantling of quantitative import restrictions. Import licensing was eliminated for all except a limited range of products subject to health, sanitary or strategic controls.

Table 1.3 (Contd): Landmark Changes in Trade Policy		
Country	**Major Reforms**	**Comments**
	WTO, 1995	Member of GATT since 1970.
	COMESA, 1993	Party to COMESA FTA 2000.
	SADC, 1992	Trade Protocol calls for removal of intra-regional tariffs by 2008 except in 'sensitive products'.
Mozambique	ERP, 1987	Included substantial trade liberalisation.
	WTO, 1995	Member of GATT since 1992.
	SADC, 1992	Trade Protocol calls for removal of intra-regional tariffs by 2008 except in 'sensitive products'.
Namibia	WTO	WTO membership led to progressive reductions in all kinds of trade-restricting practices. GATT member since 1992
	SADC, 1999	Trade Protocol calls for the removal of intra-regional tariffs by 2008 except in 'sensitive products'.
	SACU, 1970	Agreement helped Namibia to secure its major market i.e. South African market, thereby allowing Namibian industrial planners and business to plan for the wider regional market.
Uganda	WTO, 1995	Member of GATT since 1962.
	EAC, 1999	Customs Union with Kenya and Tanzania with common external tariff by 2009.
	COMESA, 1993	Not a party to COMESA FTA. Plans to join soon.

Source: 7Up3 Country Reports (www.cuts-international.org/7up3.htm).

M***ozambique:*** A (March 2004) study supported by the United States Agency for International Development (USAID) recommended the adoption of a staged approach for developing a competition law in Mozambique. It further prescribed the law to focus exclusively on the prohibition of price-fixing behaviour, and suggested the newly established competition agency to take up competition advocacy as a priority activity.

Further, a 'working group' within the Ministry of Trade and Industry was required to be established to serve as focal point for garnering support, funding, assistance, training, education, and constituency building. The following tasks were recommended for this 'working group':

- develop a competition law proscribing naked cartels, prohibiting price-fixing, and empowering a competition agency to review a proposed bill or statute within the government.
- begin developing a competition policy for the country.
- examine alternatives to competition law enforcement.
- plan for a Competition Agency (Authority), which is independent; gradually extends its scope of enforcement; embrace competition advocacy functions.

The Ministry of Trade and Industry (MTI) in Mozambique has started preparing the ground for a competition policy to become a reality by 2006, and has plans to subsequently draft the competition law for the country. The Ministry has appointed two officials of the designation of Directors to oversee all activities pertaining to competition policy and law in the country. A 20 odd members 'working group', comprising of various stakeholders including civil society organisations (CSOs) with basic orientation of competition policy and law has also been

constituted. This working group has been meeting regularly and discussing plans of action.

Namibia: Competition policy was introduced in 2003 through the Competition Act of 2003 (Act No. 2 of 2003). In the past, the Regulation of Monopolistic Conditions Amendment Act, 1958 (Act 14 of 1958) have regulated competition issues in Namibia. However, this is a South African Act, which was not applied in Namibia after independence.

Over time, the Government recognised the urgent necessity for a competition policy and, with the assistance of the EU, commissioned a study, which drafted the Competition Bill in 1996. The Government then established the Steering Advisory Committee on Competition, which widely discussed the Bill with all stakeholders. The Competition Act (Act No. 2 of 2003) was passed on April 24, 2003.

The rationale behind competition policy is market failure resulting from market power and externalities. However, the emphasis of competition policy is on market failure arising from the abuse of market power. Apart from enhancing efficient allocation of resources and protecting the public interest, the objectives of the Act include to:

- promote efficiency, adaptability and development of the Namibian economy;
- provide consumers with competitive prices and product choices;
- promote employment, and advance the social and economic welfare of Namibians;
- expand opportunities for Namibian participation in world markets whilst recognising the role of foreign competition in Namibia;
- ensure that small undertakings have an equitable opportunity to participate in the Namibian economy; and
- promote greater spread of ownership, in particular to increase ownership stakes of historically disadvantaged persons.

The Namibia Competition Commission (NaCC) has been established under the provisions of the country's Competition Act. The Commission comprises of a Chairperson and 4 members elected from various stakeholder groups (viz., private sector and academia).

Presently, the Rules and Regulations of the Commission is at an advanced stage of finalisation. Members of the Commission have also been provided the opportunity to participate in international conferences and training workshops on competition policy to develop thier understanding and knowledge on competition issues, and also for the purpose of getting them in touch with the larger competition community for acquiring development support. Financial resources have been allocated for the NaCC by the Ministry to help the Commission carry out its planned activities.

Uganda: There is currently no competition law in Uganda. The good news in the gloom is that Uganda has drafted the Competition Bill 2004. Stakeholders at a one-day workshop deliberated upon this Bill on October 19, 2004, with support from the COMESA. The draft Competition Bill 2004, when finally enacted and enforced is expected to:

- foster competition in the Ugandan market;
- protect consumer interests, whilst safeguarding the freedom of economic action of various market participants;
- prevent practices which limit access to markets or otherwise unduly restrain competition, affecting domestic or international trade or economic development; and
- establish a Competition Commission in Uganda.

The draft Bill is composed of ten parts and 56 sections entailing: interpretation; establishment of the Commission; formation; functions; procedures and jurisdiction of the Commission; anticompetitive practices; offences; obligations; competition advocacy; and funds, amongst others.

The draft Bill was developed with the adoption of and alignment with other national, regional and global competition policy, legal and institutional frameworks. For instance, issues of cross-border mergers were left to the (EAC) framework. The procedure was adopted from the EU Competition Directive. However, there has been no movement forward with respect to the Competition Bill which was scheduled to be tabled in the Parliament, in 2005. A Cabinet Committe has been reported to have reviewed the Bill and has send it back to the Ministry for finetuning.

Regional Initiatives

COMESA

As part of the regional integration effort mandated in its treaty, the COMESA Secretariat has developed a regional competition policy. The aim of the policy is to ensure transparency and fairness among economic actors in the region. It is claimed that the policy is consistent with the provisions and intent of the COMESA Treaty and with internationally accepted practices and principles of competition, especially the principles and rules of competition elaborated by UNCTAD under the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. Existing national competition policies shall be harmonised and brought in line with regional policy to ensure consistency, avoid contradictions, and provide a predictable economic environment.

The treaty establishing COMESA was signed by 19 African states, at Kampala, Uganda on November 05,

1993. Currently, there are 20 members.[4] Its aim is to increase social and economic co-operation between the countries of eastern and southern Africa by creating an economic community. Its immediate priority is to promote 'outward-oriented' regional integration through trade and investment. This includes the establishment of a FTA, leading to the creation of a customs union. Not all COMESA countries are part of the FTA. Currently, the FTA participants are Djibouti, Egypt, Kenya, Madagascar, Malawi, Mauritius, Swaziland, Zambia, and Zimbabwe and COMESA Competition Commission.

Groundwork for implementing the COMESA Competition Policy by establishing the COMESA Competititon Commission has also been undertaken and the functional and strucutual aspects of the COMESA Commission were discussed in a meeting held in mid-October 2006 in Manzini, Swaziland.

EAC

Another regional body, the East African Community (EAC), of which Uganda is a member was mandated to develop a regional competition policy as well as harmonise national competition rules. EAC adopted the EAC Competition Bill, in September 2006. The Community Act would pro-actively promote and protect fair competition among traders within the region. It will provide necessary procedures for the enforcement of the competition policy and streamline trading patterns among the member countries. It is, however, yet to discuss the modalities of implementing the same.

SADC

There is sufficient grounds for SADC to go for a regional competition policy and/or harmonised national competition rules. It is, however, not clear if it has made any progress in this regard in recent times. Though it has been reported that the SADC Secretariat is intent on developing a framework for Capacity Building of Members on Competition Policy and Law.

SACU

SACU also has the mandate to have a competition arrangement within its framework. Presently, SACU is developing a Cooperation Mechanism on Competition Policy with assistance from the UNCTAD.

AU Commission

The African Union Commission has recenlty initiated a consultative process on 'Harmonisation of Business Laws in Africa' through a brainstorming workshop held in mid-December 2006 in Tshwane, South Africa. Competition Law was identified as a priority area for initiation under this harmonisation exercise.

Consumer Protection

It is also well recognised now that a competition law delivers desired outcomes only if it is complemented by appropriate consumer protection and sectoral regulatory laws. A brief discussion on the status of consumer protection is presented here, while more detailed discussions on regulatory issues have been provided in a separate chapter.

Botswana adopted a consumer protection law in 1998, while Malawi adopted it in 2003. However, implementation of these laws has not yet been taken on a serious note. Mauritius also has the Consumer Protection (Price & Supplies Control) Act 12 of 1998. However, it is not a comprehensive one and is very different from similar laws adopted in other countries. Other countries deal with consumer protection with some other laws in a very haphazard manner.

Uganda is considering a consumer protection law and a draft is ready since 2000. Unfortunately, it is still unable to see the light of the day. In Ethiopia, the competition law has some provisions to deal with some of the consumer protection issues. But the issue is not treated in a comprehensive manner. Mozambique has no consumer protection law. It is neither known if the Government is considering one in near future, nor it is known if the competition law being considered would have consumer protection provisions as well. However, it is following an approach of adopting a competition policy first and then adopting a competition policy an approached followed in Malawi as well. It may be noted here that the competition policy in Malawi gave birth to a consumer protection law along with a competition law.

In sum, all the countries involved in the 7Up3 Project have made major leaps forward in liberalising their economic regimes, brought down the role of the state, and provided commanding heights to the markets. However, such a transition is not an easy process, especially in countries that followed a centrally planned economic management. Moreover, efficient markets are not automatically created, they need to be nurtured and developed by appropriate legal and institutional framework. The task is particularly challenging for former centrally planned economies, as the institutional framework created there was to support a totally different kind of economic policy regime.

The task has been made even more complicated due to the fast changing global economic and legal environment in an era of rapid globalisation. The policy and institutional frameworks at the national level not only take into consideration the opportunities

4 The following are the COMESA countries: Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Libya, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, Zimbabwe.

and challenges created by globalisation, but also take note of the commitments made by nations in different global and regional forums as well as bilateral agreements. increasingly such agreements are touching upon the issues that had hitherto been left to the national governments only.

Competition policy and law has been generally a difficult area in these countries. As it is, adopting a new law is a time-consuming process in these countries. However, competition law takes even more time as government takes extreme caution, particularly in view of business lobbies that often think this could act as another regulatory barrier affecting their business adversely. A classic example is the experience in Mauritius, where the new Government is reviewing a duly adopted law.

Market and Competition

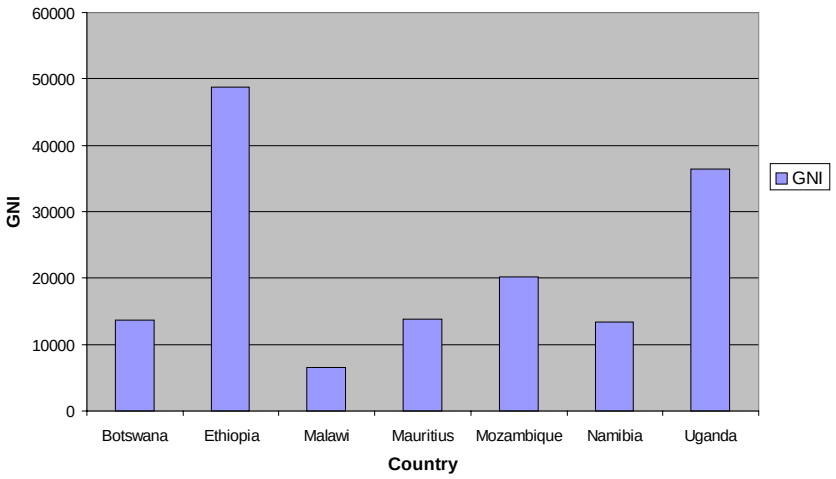
Markets in all the seven countries are relatively small in size. Even in the biggest of them, i.e. Ethiopia, the purchasing power parity (PPP) adjusted GDP[5], is less than US$50bn, which is less than one fifth of that of Bangladesh and one-sixtieth of India. The smallest market in the group is that of Malawi, which is almost one-eighth of the market size of Ethiopia. This makes introducing and maintaining competition a difficult proposition, as the small size of the markets cannot sustain too many firms, particularly in industries where economies of scale is an important factor.

Moreover, even today, a large part of the GDP involving a large section of the population comes from the subsistence sector. This is more so in least developed courtiers (LDCs) like Ethiopia, Malawi, Mozambique and Uganda where the share of agriculture in GDP is quite high. This means the size of the markets in these countries are even smaller than their size of GDP or population would indicate. To make matter worse, the entire economy of these countries does not function as an integrated market due to poor transportation and communication infrastructure, especially in Ethiopia, Mozambique, and Uganda.

The traditional State direct ownership of many firms and industries, notwithstanding the mass privatisation wave recently, has resulted in the existence of a huge State sector, comprising of many dominant enterprises in several key sectors, in these economies. One would understand that State -Owned Enterprises (SoEs) might continue to hold monopoly position in sectors with natural monopoly characters. However, that is not necessarily the case. They are given such privileges where competition can be and should be promoted.

The share of the entire public sector is about 24 percent of GDP in Mauritius. Several state-owned bodies purchase, import and store the so-called strategic products and services. The State Trading Corporation is the sole importer of petroleum products, flour, non-premium quality rice and half of total cement requirements.

Figure 1.4: PPP GNI 2003 (US$mn)



Moreover, there are also instances where private companies operate side by side with SoEs, but the latter draws undue advantages from their ownership status. The fact that the government bears part of the costs of a state-owned newspaper while leaving the private ones in the lurch is an example of such a practice. (refer Box 1.1)

While problems may not lie with the size of these dominant enterprises (which might be either state-owned, private-owned, or foreign-owned), or the overall structure of any particular industry, incumbent firms have always been known as having the tendency to use their considerable power to ensure that competition never succeeds, to retain their market position or increase rents. This, unfortunately, is exactly the case in some 7Up3 countries.

Among the various dominant SoEs, several are reported to have engaged in anticompetitive practices. For instance, the Botswana Meat Commission (refer

5 GDP in PPP Dollar is a better proxy of market size as it is likely to have a closer correspondence with the volume of market transactions rather than the value of it.

Box 1.2), which holds monopoly over exportation of beef and beef products, is reported to be underpaying the farmers. Similar allegations also exist in Mauritius against the Agricultural Marketing Board, Tobacco Board, Mauritius Meat Authority, etc.

In none of these countries, except, to some extent in Botswana, one can get data on market shares and structures. Some information is available only about the number of firms in an industry and at an aggregated level, in some cases. For some industries, however, data is available for market shares of individual firms. Based upon such information, one can get a broad idea about the prevalent market structures in these countries. However, the number of firms in an industry can often be misleading, as in some industries, the prevailing market concentration is found to be very high, despite the fact that the number of firms is reasonably large with most being fringe players.

Arguably, in small economies, competition can be enhanced and maintained by allowing free imports.This may not always be possible or desirable due to several reasons. Moreover, in small economies, even high import duty can be competition-neutral, particularly in industries where there is not enough domestic manufacturing capacity and demand is met largely through imports. Thus, it can be seen that trade orientation is pretty high in these countries compared to India (30 percent) and US (20 percent). A very high level of trade orientation in Mauritius has also to be understood in context of the country increasing its export of manufactured goods substantially with high import content and low value-addition in recent years.

However, in some industries, competition concerns may arise where there is significant domestic capacity or industry and where goods and services are not easily tradable. Botswana, Ethiopia, Malawi, and Uganda are particularly vulnerable in this regard, as all are landlocked. Such is often observed in bulky goods like cement where high transportation costs make import uncompetitive. This, of course, does not mean that all products where domestic demand is met largely through import will have high degree of competition. As has been observed in Mauritius, several productshave just one or two importers.

As seen in Table 1.5, there are some products where market tends to be concentrated in almost all countries. Cement is an example, not only in these countries but also in several other countries or regions of the world. The same is true for products like tobacco, soft drinks, and beer. Financial services are another market that is quite concentrated in many of these countries. In products like soft drinks, market is globally concentrated. Hence, it is expected that they are likely to be concentrated in individual countries in the 7Up3 project as well, though this has not come out explicitly in all the country reports.

Barriers to Competition

It has often been argued that a market need not have a low concentration or a large number of players, provided there is high market contestability. This means that market entry by a new player is quite easy

Box 1.1: Mini-case Study: Media Industry in Botswana

While conducting interviews, it occurred to the researcher in Botswana that the private media companies (newspapers) were a lot more vocal about anticompetitive practices than companies from other sectors. It further occurred to the researcher that the companies' complaints emanated from their discomfort with competition from the Government newspaper, the *Daily News*. This prompted a quick comparison of two key newspapers' advertisement rates with that of the *Daily News*. Without the cost structure of the newspapers, the conclusion drawn from this comparison should be interpreted with caution.

Advertisement rates of selected newspapers

Space	Daily News	Newspaper A	Newspaper B
F/Page(f.c.)	P4,500	P7,090	P6,765
pcm	P17.0	P18.7	P17.5

There are a number of reasons why private competitors' acrimony may be justified:

(i) The *Daily News* charges lower prices despite the fact that it does not charge readers for its paper. This may be seen as undercutting its competitors.

(ii) The *Daily News* does not have direct overheads. Its employees, office space etc are paid from Government treasury. Since its competitors do not have this luxury, it can afford to charge lower prices at the expense of its competitors.

(iii) Government is known to be a bad collector of debt, a sizeable proportion of which may end up as bad debt. If the daily news is a poor debt collector, there is an additional incentive to place an advert with them, as the probability of paying them is lower than that of paying its competitors, thus defeating competition.

However, the possibility of the *Daily News* being simply more efficient cannot be ruled out without evidence from a detailed assessment of competition issues within this sector, which is beyond the scope of this study.

Box 1.2: Beef Exports Monopoly in Botswana

The Botswana Meat Commission Act of 1966 solely reserves the exportation of live animals or their edible products by the Botswana Meat Commission (BMC). BMC is the only export entity in Botswana and regulated by the Veterinary Department in the Ministry of Agriculture. One of the purposes of enacting the law was to restrict livestock movement and control diseases.

Department of Animal Health and Production, Deputy Director Phillemon Motsu observed that a permit on control of export of cattle and the licensing of export slaughterhouses, therefore, could only be issued by the BMC. Excepting, on occasions under exceptional circumstances, the Minister could give a waiver if he believed it was in public interest to issue such a permit without the concurrence of the BMC.

Some farmers have raised concern on the BMC monopoly of the beef export market and appealed to the government to liberalise the sale of live animals and their products outside the country for better prices.

Source: Daily News, 10.03.05

and if existing players earn more than normal profit then it will attract new players, reducing profitability. Because of this fear of new entry, existing players would keep prices at a lower level. Thus, it is important to assess if market contestability is high enough or if entry barrier is insignificant. Due to low level of awareness and reportage on competition issues in these countries, it is indeed difficult to get a fair picture of existing entry barriers, especially those erected by existing market players.

Nevertheless, several policy or practice-induced barriers can be observed in these countries. In Ethiopia, for example, there are several industries that are reserved for the SoEs. Despite significant progress made in terms of liberalising the business environment, several approvals are required to start a new business, which often takes substantial time and costs, acting as major obstacles for a new business operator to enter into the market. In Malawi and Uganda, for example, business registration itself costs more than the per capita income of the country, while in Mozambique it takes 153 days to get a business registered. In all these countries, except Ethiopia, the cost involved is more than that in the US even in absolute dollar terms.

Botswana has an industrial licensing policy that is quite restrictive as the licensing authority can refuse licence on grounds of lack of technical skills or inadequate availability of raw materials or perceived impact on public interest, which can mean anything. In this regard, the Government is believed to be considering some changes, but the nature and extent of such changes are not yet clear. In Mozambique also, the licensing requirements are too many and the process is also quite lengthy and involves significant discretion and arbitrariness. The labour policy, particularly the tripartite wage negotiation mechanism followed in Mauritius is considered to be investor unfriendly and working as a significant entry barrier.

Policy Considerations

Promoting and maintaining competition is not an easy task in developing countries, particularly those of small size. Market structure, though often capable of giving a reflection as to the degree of competition, may not be the best indicator while formulating or implementing competition policy in small developing countries. Smaller developing countries, thus, may rely more on the notion of contestability rather than competition within the market *per se*, in the structural sense. Contestability theory is associated with Baumol who argues that the mere threat of new firms entering a market means existing firms act competitively, i.e. lowest costs, prices and profits. The theory of

Table 1.4: Trade Orientation of 7Up3 Countries

Countries	Exports	Imports (Exp+Imp)	Trade 2004	GDP (Trade/GDP) US$	US$bn Openness = X 100
Botswana	3550	3117	6667	8660	77
Ethiopia	1373	2908	4281	8077	53
Malawi	489	689	1178	1813	65
Mauritius	3270	3270	6540	6056	108
Mozambique*	994	1685	2679	4320	62
Namibia	2128	2510	4638	5456	85
Uganda	957	1845	2802	6833	41

**** Data for 2003. GDP for 2004 = 5548***
Source: World Development Indicators
** Source: CIA Fact file <http://www.cia.gov/cia/publications/factbook/index.html>*
*** UNDP*

Table 1.5: Products with High Market Concentration*	
Country	**Sectors**
Botswana	Long distance transport, hotel & restaurant, agriculture; a little less in manufacturing, finance
Ethiopia	Cement, sugar, mineral water, plastic products, soaps, soft drinks
Malawi	Manufacturing (agro-based – tobacco, cotton), finance
Mauritius	Utilities, beer, tobacco, pharma products, cement & petro products (import and distribution), banking, insurance
Mozambique	Sugar, tobacco, soft drinks, beer, cement, banking, insurance
Namibia	Banking,
Uganda	Utilities, finance, manufacturing (food processing)
**Based on available information only. There may be several other products with high market concentration.*	

contestable markets argues that what is important is not actual but potential competition. A market is perfectly contestable when the costs of entry and exit are zero where any entry costs can be recovered on exit, i.e. there are no sunk costs.

In a contestable market, the threat of entry by potential rivals will ensure that the firm or firms in the industry will earn normal profits and deliver allocative and productive efficiency: Unfor-tunately, as can be seen above, the policy-induced entry barriers are quite high in the 7Up3 countries, which are hardly good to promote market contestability. This may also require bringing down the trade barriers as well. However, this, again, might not be always easy. Firstly, for many countries, custom duty is a major source of revenue. Secondly, developing countries might want to give protection to infant and emerging industries.

Sectoral Regulation and Competition

During the 1980s and early 1990s, developing countries underwent far-reaching market oriented economic reforms, leading to considerable decline in the role of the state in economic activities. This has resulted in widespread privatisation, deregulation, and internal and external liberalisation. These policies have opened up these countries' domestic markets and exposed them to international competition. There are, however, several sectors in an economy where natural monopoly exist or are generally prone to market failures due to some peculiarities. Hence regulation cannot be totally done away with.

In a rapidly growing economy, regulation provides a stable environment for firms. It stimulates investment, enhances certainty, promotes research and development (R&D) and innovation, provides efficient product and factor market, and above all, facilitates orderly exit and restructuring. Regulatory regimes that encourage competition and innovation are particularly necessary in promoting industrial competitiveness, job creation and economic growth. More importantly, it helps to address market failures, which may prevail instead, when market forces are left to themselves, especially in certain sectors, where competitive markets may not be the optimal structure or yield desired results, such as: telecommunications, energy (electricity, oil and gas), transport (seaports, civil aviation, roads and highways, railways), water, and financial sector (banking, capital market, insurance), etc.

Table 1.6: Costs of Starting a Business				
Countries	**No of procedures**	**Duration (days)**	**Cost (US$)**	**As percentage of PCI**
Botswana	11	108	475	10.9
Ethiopia	7	32	77	65.1
Malawi	10	35	237	139.6
Mauritius	6	46	406	8.8
Mozambique	14	153	238	95
Namibia	10	95	444	18.8
Uganda	17	36	318	117.8
US	*5*	*5*	*210.00*	*0.528*
Source: Doing Business in 2006, World Bank				

Competition is an unambiguously good thing in the first-best world of economists. That world assumes large numbers of participants in all markets, no public goods, no externalities, no information asymmetries, no natural monopolies, complete markets, fully rational economic agents, an efficient court system to encourage contracts, and a benevolent government providing lump sum transfers to achieve any

Table 1.7: The Evolution of Regulatory Regimes in 7Up3 Project Countries			
	Electricity	**Telecommunications**	**Banking and Financial Services**
Botswana	1993 (Ministry of Minerals, Energy and Water Affairs – Energy Affairs Division)	1996 (Botswana Telecommunications Authority)	(Bank of Botswana)
Ethiopia	1997 (Ethiopian Electric Agency)	1996 (Ethiopian Telecommunications Agency)	1964 (National Bank of Ethiopia)
Malawi	(National Electricity Council)	1998 (Malawi Communications Regulatory Authority – MACRA)	(Reserve Bank of Malawi)
Mauritius	1970 (Utility Regulatory Authority)	1988, 1998 & 2001(Information and Telecommunications Authority)	(Bank of Mauritius & Financial Services Commission)
Mozambique	1997 (National Directorate of Energy – DNE)	1992 (*Instituto Nacional das Comunicacoes de Mocambique* – INCM)	(*Banco de Mocambique*)
Namibia	2000 (Electricity Control Board)	1992 (Namibia Communication Commission)	1997 (Bank of Namibia) & 2001 (Namibia Financial Institutions Supervisory Authority)
Uganda	1999 (Electricity Regulatory Authority)	1997 (Uganda Communication Commission – UCC)	(Bank of Uganda)

desirable redistribution[6]. It is also further argued that if any one of the assumptions necessary for the validity of the fundamental theorems of welfare economics cannot be met, restricted rather than unrestricted competition may be a better strategy.

On the basis of the above argument, 'unfettered' competition may not be appropriate for the sectors that are characterised by incomplete and missing markets. In such sectors, unfettered competition may lead to price wars and unhealthy rivalry, which may have repercussions on future investment. In this regard, too much competition can be as harmful as too little. Hence, it is appropriate to ensure optimal degree of competition that would involve some degree of rivalry to reduce inefficiency in the use of resources at the micro level but not so much competition that would reduce the propensity to invest. In other words, regulation is required.

Deregulation, Privatisation and the Evolution of Regulatory Regimes

During the 1980s, public enterprises accounted for approximately 14 percent of GDP in African nations and approximately 11 percent in developing countries as a whole[7]. The 1990s, however, saw governments there traded the commanding heights of their economies for more nearly free marketplaces, recognising that they might have taken on a role that they could not adequately fill and that a greater reliance on markets would be beneficial.

Regulatory reforms in 7Up3 countries happened as an indispensable part of this overall market reforms and liberalisation process. These reforms happened rather late, at various points in time, and did not follow any specific pattern, strategy or programme. This is due to a multitude of reasons: the slow and

6 Laffont (1998), *Competition, Information and Development*, presented in the Annual World Bank Conference on Development Economics, World Bank, Washington

7 World Bank, *Bureaucrats in Business: The Economics and Politics of Government Ownership* (Oxford: Oxford University Press, 1995), p.30, as quoted in "Competing with the Government: Anticompetitive Behaviour and Public Enterprises", Eds. R. Richard Geddes, Hoover Institution, March 2004

unstable pace of general reforms, government changes, political unrest or civil wars, as well as the low level of development of the economies and the dearth of expertise (See Table 1.7). In many cases, the reforms were pushed by the SAP of the IMF and the WB.

However, it is also due to the same set of reasons that the reforms undertaken are not of very far-reaching nature. Even until present, the regulatory systems in those countries remain to be fully developed. In many cases, the dominant SoEs, monopolies still exert considerable power over the operations of market forces in the whole sector.

Botswana – At the time of independence in 1966, Botswana was one of the poorest countries in the world. The dominant economic activity in the country was cattle-rearing. However, the discovery of diamonds in 1967 brought rapid and sustained growth, allowing remarkable advances in both social and physical infrastructure. This ensured that Botswana could avoid the pressure of international financial institutions to go for liberalisation and deregulation. Though unclear, but compliance with WTO agreements as well as changes in economic thinking in general might have been the leading causes of Botswana's regulatory reforms. In 1996, soon after adoption of the Telecommunications Act 1996, the Botswana Telecommunications Authority was set up. The electricity sector continues to be under the jurisdiction of the Energy Affairs Division of the Ministry of Minerals, Energy and Water Affairs since 1993, while the Bank of Botswana oversees the banking and financial services industries.

Ethiopia – When the Ethiopian People's Revolutionary Democratic Front (EPRDF) came to power in 1991, economic and political strains pushed the Government to embark on a programme of economic stabilisation and structural adjustment. Supported by the IMF and the WB, Ethiopia's adjustment policies ran for more than four years, under a Structural Adjustment Facility (1993-1996) and Enhanced Structural Adjustment Facility (1996-1999).

Due to this, drastic measures were taken in Ethiopia to liberalise business licensing, import-export regulations, and foreign exchange regulations. Other regulations have been relatively simplified, brought down to one-stop-shop approaches and as a result, some improvements are registered in 2003-04. It is also during these years that the regulated sectors, such as telecommunications and energy, were liberalised and regulatory institutions were established.

Malawi – Malawi is another case in which SAP has played a considerable role in promoting economic and regulatory reforms. The accelerated privatisation of Malawi's publicly owned enterprises was key objective of the IMF's economic reform programme. Malawi's privatisation programme started with the passing of the Public Enterprises (Privatisation) Act in 1996. Since then the programme has been plagued by controversy, and the Government was forced to suspend it for four months in 2001, after controversy over the privatisation of Malawi Telecom. The public outcry has been fuelled by exponential price increases by the newly privatised or partly privatised utilities, such as the 44.4 percent tariff increase by the Electricity Supply Corporation of Malawi (ESCOM) in 2001.

Mauritius – It is said that Mauritius is one of the rare countries in Africa where reforms have been relatively successful and one country, which has been able to benefits from the globalisation process; while most other southern and sub-Saharan countries have 'missed the boat'. The country started its trade liberalisation process in mid 1990s, but regulatory reforms have started much earlier. However, parastatals still assume great significance over supply and control of 'strategic' goods and services in the markets. Until now, SoEs still contribute almost 100 percent of the water output, around 60 percent of electricity production, about half of the total production in transport and communications and about a fifth in finance and related activities.

Economic activities in the telecommunication sector are under the regulation of Emtel, a regulatory body (the Information, Communications and Technology Authority). The Utility Regulatory Authority is the supervisory body for the electricity and water industries, while the Bank of Mauritius and the Financial Services Commission oversee banking and other financial services, in accordance with the Banking Act 2004.

Mozambique – The Republic of Mozambique became independent from Portugal in June 1975, after 10 years of freedom fighting. Initially, Mozambique adopted a communism-oriented government with a centralised economy. The country suffered badly from 16 years of civil war, which caused severe damage to human life as well as economic and social structures. The Mozambican government initiated the Structural Adjustment Programme (SAP) in 1987, aimed at reducing state control over the economy, and expanding the responsibility of the private sector in economic activities. The SAP was transformed into a comprehensive market-oriented 'Economic Rehabilitation Programme' (ERP) in 1987, which was subsequently renamed as 'Economic and Social Rehabilitation Programme' (ESRP) in 1989, to put focus on the social dimension of the adjustment effort. In the process, most of the industries owned by the government were privatised.

Reforms and transition to a market economy, however, only started formally around 7 or 10 years ago, together with the arrival of a democratically elected government (after 16 years of civil war). This determined the late development of a regulatory framework in Mozambique: In 1992, as part of the SAP, the commercial and the central bank functions of the *Banco Comercial de Moçambique* (BCM) were separated. In the same year, a Telecommunications Law was adopted and the *Instituto Nacional das Comunicacoes de Mocambique* (INCM) was established as an independent regulatory body under the umbrella of the Ministry of Transport and Communication (MTC). In 1997, a new Electricity Act was approved by the Parliament and the National Directorate of Energy (DNE) was formally recognised as the statutory organ supervising the sector.

Namibia – Namibia achieved its independence in 1990, rather late as compared to other countries in the region. However, since political stability was gained, the country has been striving to catch up with its neighbours, taking advantage of the reforms wave which was sweeping through the continent then. As part of the transition from the pre-independence institutions, the Department of Posts and Telecommunications was dissolved in 1992, and replaced by Telecom Namibia. Telecom Namibia, which is a SoE, was granted full monopoly over all basic telecommunications services. The Namibia Communication Commission (NCC) created in 1992, as a quasi-independent regulatory body, regulates the telecommunication industry, which has long been scheduled to be fully liberalised by the year 2004.

In the electricity sector, the Electricity Act, 2000 (Act No. 2 of 2000), which came into effect in July 2000, made provision for the establishment of the Electricity Control Board (ECB) to regulate Electricity Supply Industry (ESI) in Namibia. The Bank of Namibia Act, 1997 (Act 15 of 1997) established the Bank of Namibia, the central bank that oversees economic activities in the banking sector. The non-banking financial sector is regulated by and are registered with the Namibia Financial Institution Supervisory Authority (NAMFISA), which was established in terms of NAMFISA Act, 2001 (Act No. 3 of 2001).

Uganda – The privatisation and deregulation policy in Uganda is an integral part of the SAP currently being implemented in the country. The SAP has four main elements, one of which is the privatisation of public enterprises, so as to (i) relieve the national treasury of the burden of the public enterprises financial and capital losses, (ii) generate revenue for the treasury, (iii) promote and develop an efficient private sector, and (iv) improve the performance of public enterprises retained by Government with partial or whole ownership. Deregulation was instituted in sectors considered crucial to the economy to check anticompetitive activities and take charge of firms and persons whose actions could be injurious to the economy and to individual consumers. It was also due to the need to put in place a rigorous regulatory regime following withdrawal of Government from business.

Through bodies like the Uganda Communication Commission (UCC), which were set up in 1997 by the Communications Act adopted earlier the same year, or the Electricity Regulatory Authority, which has set up (in 2001) by the Electricity Act 1999, safeguards have been thoroughly prescribed. The regulatory framework covers licensing, supervision, regulation, and surveillance. The agencies have investigative powers as well as powers to discipline, handle consumer complaints, and arbitrate in disputes involving firms. The bodies enjoy a large measure of operational and financial autonomy, although they are still under the oversight of a Minister responsible to Cabinet and have ultimately to account to Parliament through the relevant Minister.

Organisational Autonomy of Regulators

The adoption of sectoral regulations, as well as the establishment of sectoral regulatory agencies, however, is not an end on its own. More important is the effectiveness of regulation, which entails the effectiveness of the operational performance of the regulators.

To be effective, regulators must have clear legal authority and the capacity to carry out their mandate. They should have competent, non-political and professional staff. They should operate within a statutory framework with substantive and procedural requirements that ensure integrity, independence, transparency and accountability.

Some attributes, which are essential for the independence of regulators, include:

Mandate – An effective regulator will typically have its mandate clearly defined by law and will not be subject to ministerial control and discretion or the agency's status outside the executive and legislative branches of Government.

Institutions – This is comprised of three critical elements. First, senior personnel should enjoy security of tenure: clear rules, ideally involving two government bodies, must govern their appointment and, especially, dismissal. Second, the agency's governance structure should consist of multimember commissions composed of experts. And, third, decision-making should be open and transparent to the extent consistent with commercial confidentiality, enabling both the public and the industry to scrutinise regulatory decisions.

Budget – Regulators should be given access to independent sources of funds, such as user fees or levies on the regulated industry. In order to prevent levies from growing too burdensome, the law establishing the agency may set a cap on levies, usually defined by reference to industry turnover. Government support, if necessary, should come from the general budget and without strings attached.

In many developing and transition economies, however, regulators usually do not enjoy functional autonomy. Many of these agencies report to line ministries and are mainly staffed by government representatives. Governments are usually reluctant to consign important regulatory functions such as tariff-setting to these sectoral watchdogs. Besides, it is also because regulatory agencies often have potential problems of their own. As agencies tend to respond to the wishes of the best-organised interest groups, when regulators are free from political control, the risk of "regulatory capture" by other groups – in particular, the industry they regulate – grows. Agencies that suffer from such capture come to identify industry interests (or even the interests of individual firms) with the public interest. And industry capture can undermine the effectiveness of regulation just as political pressure can. Regulators may, for example, formulate rules so as to minimise industry costs rather than strike an appropriate balance between those costs and public benefits. Other causes of the lack of autonomous powers by sectoral regulators in developing economies are of course the weakness of the overall administration system and the low sophistication level of policy-making skills. The situation in 7Up3 Project countries demonstrates most of the above-mentioned characteristics.

Of the few regulators that have been recently established in these countries, none of them possess any high degree of autonomy. Take the case of the telecom regulators. All the seven Project countries have already set up a regulator for this sector. However, these agencies' independence is highly susceptible to the negative effects of corruptive powers in the governments, as well as to the hostile lobbying of big businesses, both foreign (transnational corporations) and domestic. Besides, all these regulators are still very young, whose establishment is carved out of the traditional regulators in these countries – the line ministries. Their institutional capacities are still underdeveloped and the legacy of the old mechanisms is still very strong.

Interface Problems

It is rather well-recognised that regulated industries in developing economies are often either under-regulated or over-regulated, never with the right dose. More often than not, these industries are overseen by a multitude of institutions, which tends to increase regulatory complexity, confusion and risk. In addition to the strong legacy of the old administrative system, the low degree of autonomy of the regulators and the lack of delineation in power and authority are the main causes leading to this situation.

The most major interface in many cases is the interface between sector-specific regulators and a country's competition regulator (i.e. competition authority). The reform process mentioned earlier, in addition to bringing about the regulatory evolution in many countries, also raises important questions about the scope of regulation needed in sectors being opened up to greater competition, and on the other hand, the optimal level of competition and the behavioural aspects of firms operating in regulated industries. The issues of interface arises, in many developing economies, when a competition policy and law is adopted to respond to the emerging issues of market regulation, and firms and industries, which traditionally were subject to only sectoral regulation, now find that they have to face regulation from both the competition authority and the sectoral regulators at the same time. The problem is that, historically, in most countries, these two types of regulatory institutions evolved as distinct agencies with relatively limited formal relationships. Therefore, when the interaction among sectoral regulators and competition authorities is ill-defined, the opportunities for turf-disputes and legal wrangling are multiplied.

Most of the 7Up3 countries have already adopted a competition law, and as mentioned above, several regulatory provisions as well. However, in most cases, no clear delineation has been made between the authority and responsibility of the sectoral regulators and the competition authorities.

Botswana – The Botswana Parliament passed the National Competition Policy for Botswana in August 2005. In order to ensure that the Competition Policy is properly implemented, the Botswana Government plans to formulate a Competition Act, through which competition in the market place will be regulated.

Regarding the interface problem, the Botswana Government recognises the important role and advantages of having sector regulators such as the Bank of Botswana (BoB) and the Botswana Telecommunications Authority (BTA). However, it is planned that all these will fall under the ambit of the future Competition Law. The Government also intends to harmonise all legislation related to the Competition Policy in order to ensure consistency between them. In sectors characterised by economic/commercial activities, complex science, engineering and technology or having natural monopoly or other special elements, the future Competition Authority and Sector Specific Regulators will collaborate and complement each other.

Ethiopia – Ethiopia's Trade Practices Proclamation No. 239/2003 was legislated with the purpose of regulating trade practices in the country. However, the proclamation is silent about whether unfair or restrictive trade practices in regulated sectors like telecommunications and energy will come under its jurisdiction. It is said that the sectoral regulatory agencies already established are to protect the market from anticompetitive practices in these specific sectors.

Malawi – The Competition and Fair Trading Act (CFTA), which was assented to by the President on December 30, 1998, and gazetted on December 31, 1998, started being developed immediately after the Cabinet approval of the Malawi Competition Policy in 1997. The policy direction in the preceding statute was thereby reflected, so the Act has overriding power over all other sectoral regulations if the latter happens to restrict economic freedom in the market.

Mauritius – The Competition Act 2003 of Mauritius aims at providing the legal framework necessary to control RBPs and to regulate competition in the country. Looking at the first schedule of this Competition Act, it seems that such interface problems might not arise in Mauritius as it is stated that the law will not apply to "any practice or agreement expressly required or authorised by an enactment or by some scheme or instrument made under an enactment". This will imply that regulatory regimes established by statute and administered by regulatory bodies are outside the scope of the competition law. Besides, the second schedule of the Act excludes certain goods and services excluded from provisions relating to monopoly situations including aviation and harbour services, broadcasting services, electricity services, financial services, freeport services, information and communication technologies, postal services other than courier, goods and services supplied by state enterprises and water other than for retail trade.

Mozambique – Mozambique does not have a competition law at the moment, though the Ministry of Trade and Industry in Mozambique has started preparing the ground for a competition policy to be adopted very soon, and has plans to subsequently draft a competition law for the country. In such a context, competition issues in regulated sectors are naturally being taken care of by the sectoral regulators. For example, the Telecommunications Law 1992 of Mozambique has "promotion of fair competition and consumer protection" as one of the objectives and has some substantive provisions, as well. Hence, the issue of interface is likely to arise once a competition law comes into force. The nature of interface problem will depend the way the forthcoming competition law is drafted.

Namibia – The Competition Act of 2003 made provisions for the establishment of the Namibian Competition Commission (NaCC) to implement the Act. The Act applies to all economic activity in Namibia, or having an effect on Namibia, except the following:

- Collective bargaining activities or collective agreements negotiated or concluded in terms of the Labour Act, 1992 (Act no. 6 of 1992);
- Concerted conduct designed to achieve a non-commercial socio-economic objective; and
- In relation to goods or services, which the Minister of Trade and Industry, with the concurrence of the NaCC, declares by notice in the *Government Gazette*, to be exempt from the provisions of this Act.

With regard to the interface problem between the future competition authority and the existing sectoral regulators, the Act has binding effects on the State, when the State engages in trade or business for production, supply or distribution of goods or provision of any service, though the State is not subject to any provision relating to criminal liability. The Act also applies to activities of statutory bodies, except in cases when such activities are authorised by any other law.

Uganda – In Uganda, regulatory reform as well as process of establishment of a framework on competition regulation, has induced important debates about the degree to which sectors being opened up to greater competition should also be subject to general competition laws enforced by the same competition agency responsible for protecting competition in other sectors of the economy.

In practice, regulatory reform has rarely consisted simply of abolishing regulations and leaving everything up to market forces that would later be operating within general framework competition law. It is expected, like in a number of situations elsewhere, policymakers would adopt the view that competition must be fostered by a new kind of regulation, which may or may not be intended to be strictly transitory.

There are some examples of new regulators being given mandates to promote competition and even being charged with the formulation of competition rules. The status quo, with regard to division of labour, is that regulatory agencies by default are supposed to ensure that competition takes place in the sectors under their respective jurisdiction. However, the draft competition law in Uganda gives the competition agency the ultimate authority with regard to competition regulation. It provides that: "where in the course of a proceeding before any statutory authority entrusted with the responsibility of regulating any utility or service, an issue is raised by any party that any decision that the statutory authority has taken or proposes to take, is or would be, as the case may be,

contrary to the provisions of this Act, then the statutory authority shall make a reference to the Commission".

Policy Considerations

It follows from the above facts that in the absence of a competition policy and Law, an effective regulatory framework, i.e. a regulator with functional autonomy is very essential, particularly in the developing countries to regulate specific sectors, in the utility sectors. In order to facilitate the development of markets, a right regulatory and political environment is a pre-requisite. This includes tax policies, trade policies, competition and regulatory policy. Care should be taken to ensure that the respective sector / economy is not over-regulated. It is essential to strike the right balance.

The role of the regulator is to advise the line ministry on policy, solve disputes among service providers and ensure that rules and regulations governing the business are followed. The line ministry should not have superseding power powers in matters of appeal against the decisions of the regulators, as this undermines its power and independence. As in some sectors private companies and SoEs compete, care should be taken to ensure conflict of interest situations and to ensure that the SoEs do not get undue advantage.

Competent, non-political and professional staffs should man a regulator, which operates within a statutory framework with substantive and procedural requirements in order to ensure integrity, independence, transparency and accountability. A regulator should comprise of experts, and be free from bureaucratic control. It may be noted in this context that some of the issues highlighted here are equally important in implementing a competition law as well.

Anticompetitive Practices

With the legacy of the old command and control economic mechanism in most of the 7Up3 Project countries, notwithstanding recent reform efforts, they still continue to maintain inefficient administrative system, which, among other externalities, hampers entrepreneurship and competition in the market. However, removal of such policy barriers to competition would not be enough to promote competition in the market in these countries, and it can still be distorted or limited by several anticompetitive practices of firms, such as colluding to fix prices and discourage new entries, or abusing market power or monopolies to prevent entries by competitors in order to keep prices and profit high, etc.

Many believe that markets in general are less competitive in developing countries. With a few exceptions, domestic markets in developing countries tend to be small, with low human capital, poor infrastructure, volatile economies, and few manufactured inputs produced domestically[8]. Evidence from the 7Up1, 7Up2 and 7Up3 projects also suggests that developing country markets are prone to anticompetitive practices and unfair trade practices; and these are not only taxing consumers heavily, but also negatively affecting the business environment,

Table 1.8: Most Common Anticompetitive Practices in 7Up3 Markets

	Botswana	*Ethiopia*	*Malawi*	*Mauritius*	*Mozambique*	*Namibia*	*Uganda*
Collective Price-fixing	+++	+++	+++	+++	+++	+++	+++
Market sharing	+++		++	+++	++	+++	
Bid-rigging	++	+++	+++	++	++	+	+++
Tied selling					+	++	
Resale Price Maintenance			+	++	+	+++	++
Exclusive dealing	+++		++		++	++	
Price Discrimination			++		+++	+++	+++
Predatory pricing	++		+		+	++	
Unreasonably high price							
Refusal to deal					+	+	
Unfair Trade Practices	++	+++			++		+++

Source: Compiled from 7Up3 Country Reports (For more details, refer www.cuts-international.org/7up3.htm)

Note: (+++) Significant
(++) Moderate
(+) Existing but insignificant

8 World Bank (2003), *Global Economic Prospects 2003: Investing to Unlock Global Opportunities*, Washington D.C.

Box 1.3: Tobacco Buyers Cartel in Malawi

The current anticompetitive structure of the tobacco market compounded by the level of transparency created by the auction system as it is currently operated enables the big buyers to minutely monitor all new entrants and sanction them as and when they see an opportunity to do so. This is a according to a Report on 'Tobacco Sales in Malawi', compiled by Clive Stanbrook, a renowned British lawyer.

"One of the reasons that the contract sales for flue cured tobacco were at better prices than on the auction floor in the year 2006 may have been because they were carried out in less transparent circumstances", claims the Report.

Responding to the Stanbrook Report, Managing Director of one of the big buyers of the Malawi leaf, Limbe Leaf Tobacco Company C A M Graham in an advert said "such transparency does not lend itself to confidentiality for anyone participating on the Auction Floors and this 'open auction system' may not suffer sufficient confidentiality for buyers and their customers. Whether this way of doing things limits competition or not is subject to debate". Graham in the statement added that the fact that Dimon and Standard Commercial for example have merged their worldwide operations thus leaving few buyers in Malawi is not something that is attributable to Limbe Leaf Tobacco Company".

Graham adds that the tobacco industry generally and the Malawi industry in particular is at an important phase in its history in that the structure of producer marketing arrangements needs to be carefully and responsibly addressed by all stakeholders in Malawi. The Report says the existing two main buyers have been able to exclude other buyers from their market both by their strong market shares and making market access almost impossible for new entrants.

Stanbrook recommends that the Tobacco Control Commission (TCC) and the Minister have the power to bring about some immediate changes that would be beneficial to the growers in a very short time. "These would be aimed at reducing the transparency of the auction system and establishing clear competition based conditions, breach of which would endanger the buyers licence", says Stanbrook. The Report further recommended that Government to initiate a criminal investigation into the buyers' cartel.

The TCC is established as a watchdog under the Control of Tobacco Auction Floors Act. Its duties are, among others, to promote and expand the sale of tobacco and most importantly, to control and regulate the sale of tobacco on the auction floors in Malawi.

(The Chronicle Newspaper, 18.08.05)

thereby. Since the 7Up3 Project countries do not have enough experience of implementing a competition law, the anticompetitive practices discussed here are suspect in nature and cannot be considered as clear cases of such practices as there were definitive investigation or adjudication into the cases, and they are based primarily on media reports.

Prevalent Anticompetitive Practices

As found in the survey, collusive behaviour or price-fixing is quite common in all project countries. Several cases of price-fixing have also been reported in the media. The cartels very often worked under the sham covers of business or trade association. The individual enterprises, in these cases, did not seem to have any choice other than doing likewise with the whole 'family', otherwise they would face serious trouble including danger to their lives. The Sugar Syndicate in Mauritius is a classic example. The Syndicate is a private association that controls sugar marketing, including export from the country. One often hears the argument that such trade association should be allowed to engage in such practices in the interest of small and medium enterprises. However, when such association includes even the large players and who effectively control the association's policies and practices, one would wonder if such practices should be ignored.

Similarly, in Uganda, transport operators, under associations, which are normally contracted by local government authorities to run bus and taxi terminals collude to fix bus and taxi fares. In Uganda, there is also compelling circumstantial evidence that price fixing is prevalent in the local petroleum industry. In Malawi, the tobacco farmers suffer from the collusive practices of the buyers who exert monopsonistic pressures (refer Box 1.3).

Another anticompetitive practice, which is also quite prevalent and troubling in the 7Up3 countries, is collusive tendering. Almost all cases of collusive

Box 1.4: Monopoly in Ethiopian Telecom Sector

The Government-owned Ethiopian Telecommunications Corporation (ETC) is the country's monopoly telecom company, which provides a national landline and mobile phone network. *EthioMobile*, the mobile division of ETC, remains the country's only mobile operator.

ETC has been repeatedly criticised 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 has mostly been limited to the Addis Ababa region and the customer base is low, compared to other African nations.

The Ethiopian authorities started a slow and partial privatisation of ETC two years ago. A few months ago, ETC entered into a €40mn (US$58.6mn) 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.

Source: Afrol News, 24.08.04 (www.afrol.com/articles/13806)

Box 1.5: Backdoor Commercial Activities Reducing Competition in Mauritius

During the last ten years or so, Mauritius has witnessed major changes in the retail market of food and non-food products. Giants from France (Score, Continent, Jumbo, Super U) and South Africa (Spar, Shoprite) have invested in huge departmental stores, where everything is available. This is a cause of great concern to local traditional shops, mainly family businesses. These companies have brought with them anticompetitive practices, in particular backdoor commercial practices that allow them to sell some products, fast movers, below cost price.

These backdoor practices consist mainly of activities not pertaining to commerce as such. It involves the sale of specific places on the shelves, the sale of advertising space on trolleys, the sale of advertising space on brochures, the printing of coloured brochures on a monthly basis. Such activities bring in a lot of money, which allow the departmental store to offer some fast moving products below cost price. These practices are considered to be anticompetitive and illegal in several countries, but not in Mauritius. It is a market strategy to attract buyers into the stores, in the expectation that they would be incited to buy the other products. Impulsive buyers are their targets.

Low price sales, presented as promotional events almost every month, are a threat to traditional shops. The aim is to eliminate these shops and, hence, impose their writ on the retail market. In a large village in the North, Triole, some twelve shops had to close down following the opening of Winners self-service supermarket. *Winners*, is one of eleven stores operating under the same name. Their huge turnover allows them to offer promotional sales every month. The country has some fifty such stores over the island, against some 3,000 retail shops battling for their survival.

One of the backdoor practices of department stores consists of imposing charges on distributors to occupy a prominent spot on the gondola. This may amount to as much as Rs 25,000 per month in order to keep a product at a strategic point where consumers move from counter to counter. These charges may be damaging to some products.

One importer, *Dabydoyal Brothers* tried to launch a new brand of table oil, *Meizan*. They sought to be present in one of the major stores, Jumbo, at that time known as Continent. They succeeded to occupy the strategic spot on the gondola for less than two months, after which they found out that it was too costly. Afterwards, they made efforts to occupy the shelf of the counter that is at consumer's eye level. They were surprised to learn that they had to pay other charges for this. They did so for one or two weeks. As time went by, *Meizan* gradually descended to the last shelf until it disappeared completely. This is one of the anticompetitive practices that have caused the loss of one operator, and reduced consumer's choice.

Source: Institute for Consumer Protection, Mauritius

Box 1.6: Motor Manufacturers Suspected of Fixing Vehicle Prices

The South African Competition Commission has initiated a formal investigation into the high prices of vehicles. The Competition Commission started with a formal investigation into alleged resale price maintenance, collusion and price coordination. Speaking to the Economist from South Africa, Zondwa Ntuli, the manager of compliance division, said the main focus of the investigation, however, "is the setting of a minimum resale price by manufacturers which we think might be the standard practice in the industry".

As a result of that announcement, Internet chat rooms and discussion sites on motor websites are filled with car enthusiasts crying for the blood of vehicle manufacturers in South Africa. They feel that they have been cheated and betrayed and claim to have suspected as much for a long time.

Namibians that keep up-to-date with South African news are wondering how the results of the investigation will affect Namibian motorists. More to the point, Namibians are asking whether Toyota, recently fined N$12mn (US$1.73mn) for fixing prices, will refrain from such practices in Namibia. They feel that vehicle manufacturers influence local motor dealers in the same way.

According to Ntuli, the investigation is expected to reveal whether anticompetitive pricing exists in the industry and if that might be contributing to high prices for consumer. Information gathered by the Commission, suggest "that it is almost a standard practice amongst manufacturers and importers of new motor vehicles to maintain minimum prices". In other words, the manufacturer imposes a minimum resale price on a dealer and by so doing limits a dealer's ability to offer discount. "We will not hesitate to recommend that the highest fine be imposed on the perpetrators, which can be up to 10 percent of the firms' annual turnover", said Ntuli.

The findings by a Tribunal of Investigation, appointed by the Commission, will not relate to the companies' activities outside South Africa, as that would be in violation of the South African Competition Act. "However, seeing that the Namibian Competition legislation is in place the findings should serve as a basis for guidance in dealing with practices of this nature in Namibia", said Ntuli. She added that the Commission could also assist Namibia with advice regarding anticompetitive practices. "The Namibian authorities should make sure that companies that operate there know that anticompetitive behaviour is also not tolerated in Namibia and the necessary provision of your Act must be invoked to deal with such practices", she said.

The Namibia Economist, 14.05.04 (http://www.economist.com.na/2004/14may/05-07-19.htm)

tendering have happened in the market for government contracts for infrastructure construction. The main reasons behind this high incidence of bid-rigging, besides the firms' own incentives to seek extra rents, are believed to be the generally low economic management capacity of governments and poor governance practices in project countries, in particular, the prevalence of corruption, bribery, and nepotism.

Abuse of dominance is another anticompetitive practice. As mentioned earlier, SoEs are monopolist or dominant in several sectors, some of them characterised by natural monopoly conditions. Dominance of SoEs need not be avoided in natural monopoly situations and in fact can be better than dominance of private companies. However, it need not be the best situation and can be improved through an appropriate regulatory framework. However, due to absence of this, abuse of dominance by SoEs is prevalence in several countries. The example of telecom in Ethiopia can be quoted in this regard. It is, however, not only the dominant SoEs in these countries that abused their dominance. Similar cases were mentioned as having been carried out by foreign and domestic private companies as well.

Vertical restraints between manufacturers or suppliers and downstream distributors in the form of exclusive dealing and geographic market restrictions can also raise significant entry barriers. In addition, firms that would be price-takers individually – and unable alone to control any significant part of the market – can work together to control the market, thus increasing prices and discouraging entry. Even the retailers by virtue of their market power or through collusive practices try to extract maximum benefits from both manufacturers as well as consumers. Often, such practice leads to the exit of some manufacturers. A case from Mauritius (refer Box 1.5) is illustrative in this regard.

As with many other small countries, most of the 7Up3 countries have a very low manufacturing base. As a result, they depend on other countries for most of their requirements of manufactured goods. Hence, many of the anticompetitive practices that may be prevalent

in these countries may originate in the countries from where such goods are sourced. Such practices though may have significant impact in these countries may not be so apparent. Obviously, it is often difficult to trace such practices and take appropriate action. One advantage for some of the project countries, particularly Botswana, Namibia, Malawi and Mozambique, and to some extent for Mauritius is that a huge share of their imports either originates or passes through South Africa. This makes it easier for them to trace the anticompetitive practices with cross-border dimensions, as they need not look at too many countries. Fortunately, South Africa has quite an effective competition regime. It is recognised that many of such anticompetitive practices that occur in South Africa, also occur in the neighbouring and closely integrated countries as well. However, though such practices may be stopped in South Africa, they may continue unabated in other countries. South Africa is believed to be willing to help its neighbours in this regard, however, the same has not yet been tested, as the neighbouring countries have not been able to create an effective competition regime.

By way of suggestion, in the absence of a comprehensive legislation on competition, all these anticompetitive practices generally escaped scrutiny of the law, or were addressed in an *ad hoc* manner, through administrative decisions, under sectoral regulations or other piecemeal rules and regulations. Of all the types of anticompetitive practices reported above, hardly any of them have been properly dealt with, judged in a court of law for instance, to set precedent for any future violators which possibly be done even in the absence of a competition law as some other existing law could be used. However, such practices are generally accepted as 'normal' business practices, as awareness level is low. The absence of a strong consumer movement and government apathy ensured that such a state of affairs remained the order of the day.

Perspectives on Competition

The effectiveness of any law in a country depends on the extent to which the law has actually evolved in the country in tandem with socio-economic and historical developments. It is necessary that there be some amount of acceptability and ownership of the law among stakeholders.[9] This is possible only if their expectations are taken into consideration, while drafting the law. This was one of the most important findings of the 7Up projects that came out with the suggestion of a bottom-up approach to the formulation and enforcement of a competition regime.

The broad groups of stakeholders whose behaviour and interests are important for the competition culture in a country are:

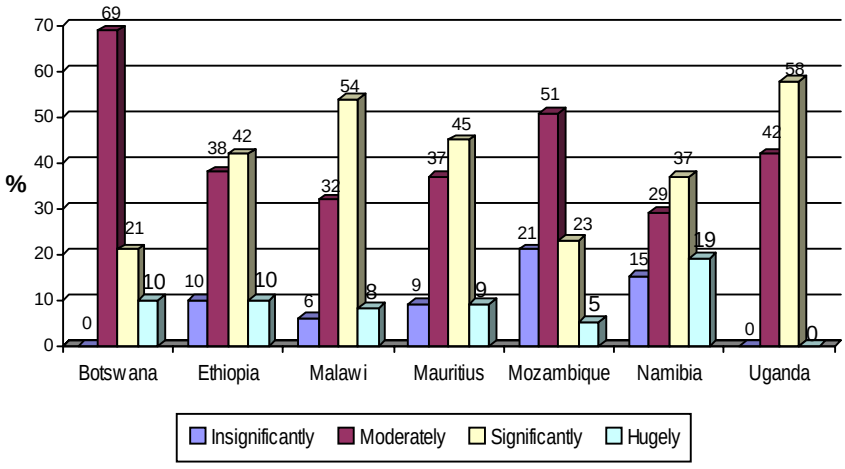
- the consumers;
- the business;
- the government; and
- the political class.

It may be noted here that we are talking about not only their attitude towards and the role in regulatory measures, but also their attitude towards the process of competition in general. The effectiveness of a regulatory regime in a jurisdiction, thus, depends on the extent to which it succeeds in bringing a balance among objectives that these three groups pursue. This is not an easy task, as many of them may be in conflict with one another.

Consumers, as a group are possibly the largest beneficiary of an appropriate competition policy and law regime and hence have a very high stake. Consumption is the sole end and the purpose of all production and the interest of the producer ought to be attended to, only in so far as it may be necessary for promoting the interest of the consumer (*Adam Smith, Wealth of Nations, 1776*). The protection of the interest of the consumer is, thus, as important as, if not more, than, the protection of the interest of the producer.

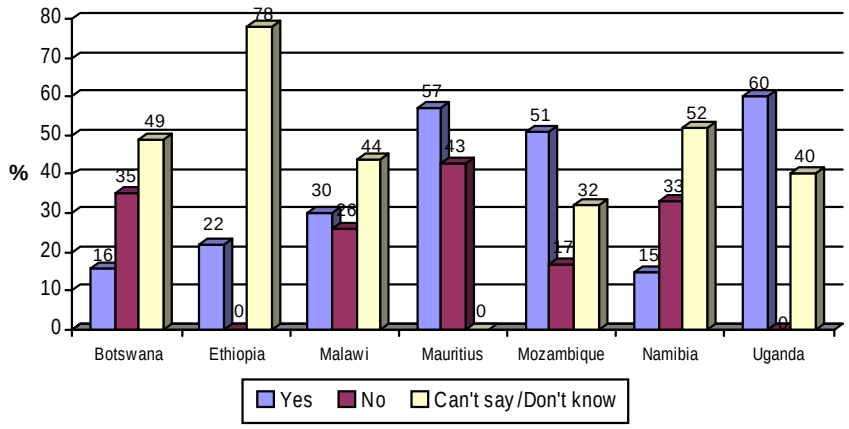
The business community is at the other end of the spectrum and its perception on competition policy may not always coincide with that of the consumer.

Figure 1.5: Prevalence of Anticompetitive Practices



9 Pistor, K (2000), *The Standardisation of Law and its Effect on Developing Economies*, G-24 Discussion Paper No. 4, United Nations, New York & Geneva.

Figure 1.6: Level of Stakeholders' Awareness



While admitting that market power can sometimes be abused, businesses often maintain that the effects of market dominance and size are not necessarily undesirable and any adjustments necessary should be left to the markets to correct.

Given that there can often be conflicts between the business and consumer interests, government policy and institutions need to play the role of arbiter. Broadly speaking, competition law and policy (CLP) has to deal with many tradeoffs in its objectives and instruments. However, it is essential to ensure that the established business units do not impede the entry of new and future players who remain unrepresented in any debate on policy or enforcement. The survey conducted under the project made an attempt to gauge the level of awareness among different stakeholders to understand their mood on some widely debated issues related to competition legislation. Due to resource constraints and other reasons, the survey was not based on a representative sample but a small sample comprising relatively more aware people among different stakeholder groups. To be specific, the survey was conducted in the capital cities of the project countries except in Ethiopia where it covered some provincial towns as well. Hence, the findings of the survey should not be considered as evidence, but mere indicative of the perceptions of the stakeholders. Survey outcomes have been discussed under five areas/issues:

- level of awareness;
- prevalence of anticompetitive practices;
- need for a competition law;
- objectives of competition law; and
- status of competition authority.

Stakeholders' Perspective with Regard to Level of Awareness

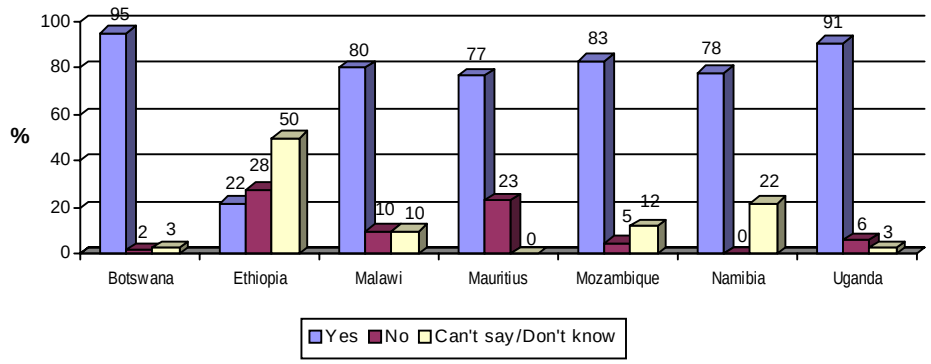
It is extremely difficult to test the awareness on the laws and regulations to check anticompetitive practices. However, it was not so difficult and rather straight forward as a large percentage of the respondents said that they cannot say or do not know about such laws. Such people were 49 percent in Botswana, 44 percent in Malawi and 53 percent in Namibia. It should be noted in this context that the survey was conducted not only in urban areas, but among the more educated and in capaital cities, except in Ethiopia.

In Uganda, about 60 percent of the respondents stated that they were aware of various rules and regulations in place to tackle anticompetitive practices. However, the fact is that they are quite inadequate, as there is no competition law. In Mozambique, another country where there is no competition law, about 51 percent said that there are laws and rules to check anticompetitive practices. Upon a cursory look we find that in Mauritius, about 50 percent of the consumer respondents were aware of such laws and regulations. As regards the private sector and government, the survey revealed that 77 and 65 percent (respectively) of respondents were aware of such laws and regulations. As Mauritius does have a competition law, it may be said that people there are reasonably aware/possess reasonable awareness. In Botswana, only 16 percent said that there are laws while the fact is that there is no competition law in the country, till today. Hence, it may be the case that the people there are relatively aware. Overall, however, the level of awareness seems to be extremely low.

Stakeholders' Perspective with Regard to Prevalence of Anticompetitive Practices

The majority of respondents felt that prevalence of anticompetitive practices was moderate to significant in their respective countries. About 45 percent of the respondents in Mauritius stated that the extent to which anticompetitive practices are prevalent in the markets is quite significant. Around 93 percent of firms and 90 percent of government institutions, which participated in the survey, agreed that such practices are widespread in Mauritius markets. In Ethiopia, 42 percent of respondents are of the view that practices thwarting competition in Ethiopian markets are quite significant. Similarly, 44 percent of the respondents in Malawi opined that anticompetitive practices in Malawian market are quite significant. About 69 percent of the respondents rated the extent of anti competitive practises in Botswana as moderate. Survey results suggest that 75 percent of Government agents and consumers and 56 percent of businesses perceive the existence of anticompetitive practices in Botswana as moderate (see figure 1.6).

Figure 1.7: Need for Competition Law



Stakeholders' Perspective with Regard to Need for Competition Law

With regard to the need for a competition law, an overwhelming majority endorsed the need to enact a comprehensive law on competition regulation. Majority called for enactment of a specific policy and law to address competition regulation. About 80 percent of the respondents in Mozambique, Malawi, and Botswana, through responses, expressed the need to formulate an effective competition law, which could tackle and deal with issues thwarting the spirit of competition in these countries. In Ethiopia, the survey outcome reflected that about 50 percent of the respondents do not know or cannot say if they need a competition law to deal with activities against the spirit of competition in an effective manner or not. The results clearly indicate the lack of awareness among people about laws specifically dealing and tackling such issues. In Mauritius, about 77 percent of respondents confirmed the need for a comprehensive competition law to check anticompetitive practices where above 85 percent of private and public sector and above 70 percent of the consumers responded in favour of introducing a more comprehensive law.

It seems that the majority of the stakeholders very well understand that in order to strengthen the functioning of market forces in an appropriate manner and to achieve the maximum benefits from the process of liberalisation, the need of the hour is for an effective competition policy and law. The responses obtained concur with the view of the stakeholders of this need and is indicative of their perception in this regard (see figure 1.7)

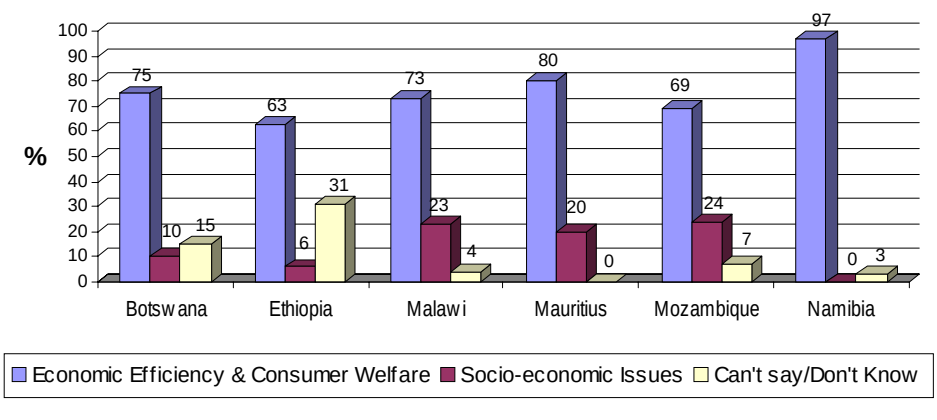
Stakeholders' Perspective with Regard to Objective of Competition Law

As regards the objective of competition law, majority of respondents expressed that it should focus on economic efficiency and consumer welfare. This view was shared by about 80 percent respondents in Mauritius and 75 percent in Botswana. Similarly, 63 percent of the respondents in Ethiopia, 69 percent of the respondents in Mozambique and about 60 percent of the respondents in Botswana expressed similar views. Very few respondents felt that the competition law should consider other socio economic issues. In Uganda, the majority of respondents were of the view that the law should not only cover competition as an avenue to ensure economic efficiency but consumer welfare as well (see figure 1.8).

Stakeholders' Perspective with Regard to Status of Competition Authority

The most common forms of competition agency are an autonomous agency or the agency under the relevant government department or ministry. Sometimes, the agency may take whatever shape the government may deem appropriate. An attempt was made to establish the respondent's views on the nature of the implementing agency. The survey reflected that overwhelming majority of respondents were of the view that the proposed competition authority should be autonomous and independent, except in Mozambique where the majority wanted it to be under the relevant ministry. About 77 percent of the respondents from Botswana reflected that the status

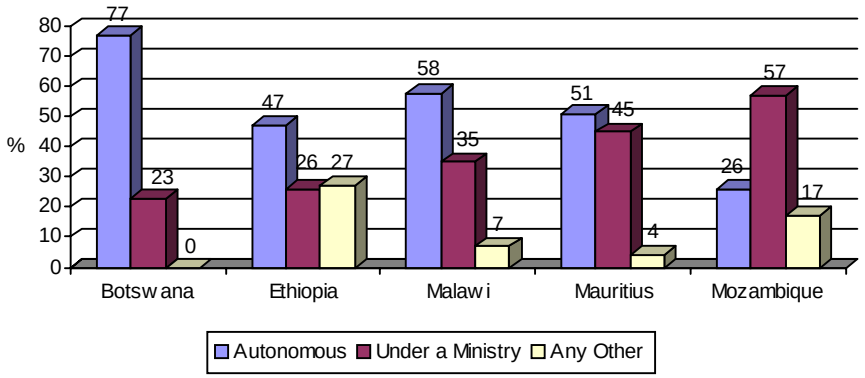
Figure 1.8: Objective of Competition Law



of the competition authority should be independent and autonomous for it to be effective. Similar views were shared by more than 58 percent of the respondents in Malawi and 51 percent of the respondents in Mauritius.

In Ethiopia, 47 percent of the responses favoured an autonomous competition authority while 26 percent expressed that such an authority should be under relevant government, department or ministry. In Uganda, majority of respondents were of the view that the proposed authority should be at the centre of competition regulation in the country. The apparently homogeneous response was linked to the practice in regulatory reform in the country. Reform has normally taken the form of setting up specific sector regulatory (SSR) bodies to oversee all aspects of regulation. Endorsement of the competition authority should therefore be seen in this light (see figure 1.9).

Figure 1.9: Status of Competition Authority



Conclusion

Historically, and across countries, markets have not developed on their own. They had to be nurtured and developed. 7Up3 countries are no exception. Hence, despite pursuing market-oriented economic policy reforms, for almost a couple of decades, markets and the private sector for that matter, are far from developed in these countries. Problems exist not only in areas with natural monopolies with classic cases of market failures, but also in other areas where promoting and maintaining competition is relatively easier. The recent global trends and the wave of new mergers have led to collusive pricing by large industrial corporations which is sometimes difficult to prove, let alone punish[10]. This, therefore, calls for a critical review of regulation, deregulation and competition policies in those countries and a thorough assessment of their impact on competitiveness, growth, and development. Adoption of a comprehensive competition policy and law as well as a regulatory framework is thus essential. Fortunately, this is now well recognised in all the countries in the project.

Emerging Trends

It is also quite heartening that Botswana has already adopted a structured competition policy ahead of adopting a competition law. Malawi also adopted a competition policy based on a detailed study of the economy before adopting its competition law. Mozambique is also following a similar approach. It may also be noted that all the countries have either adopted a competition law or likely to adopt it very soon. However, realities on the ground are not so encouraging. The countries that adopted a law have not yet shown any great enthusiasm in implementing it. The countries that are in the process of adopting a law is also not showing any urgency and it seems that it does not occupy a top position in governments' list of priorities.

The selected countries are party to some regional body or other, with some countries being a member of more than one such body. All of them, namely, COMESA, EAC, SADC and SACU are mandated to develop regional competition frameworks.

While COMESA and EAC have made substantial progress with development of regional competition legislations, SADC and SACU have also deployed resources to achieve similar targets. While SADC is trying to develop a framework on capacity building for members on competition, SACU is engaged in evoloving a Cooperation Mechanism on Competition Policies with UNCTAD's assistance. The African Union Commission has also identified Competition Policy as a priority area for undertaking harmonisation of business laws in Africa. One hopes that there are synergies between all these regional initiatives so that their ultimate goal of developing well-functioning, competitive markets in the region is achieved.

Recent body of research has shown that differences in physical capital and educational attainment can only partially explain the differences in productivity that exist between developed and developing world. The differences in capital accumulation and productivity are to a great extent driven by differences in institutions and government policies that are called social infrastructure. Undoubtedly, regulatory bodies including the competition agency are important

10 Singh (1993), *Regulation of Mergers: A New Agenda. In Industrial Economic Regulation: A framework and an Exploration*, Sugden Roger ed. Routledge

components of social infrastructure. An appropriate regulatory framework is thus important not just for the sake of markets but as a development requirement.

But, the state of the regulatory framework that exists today in most of these countries is not very encouraging. It is not only about competition law or policy, but even the development of sectoral regulation is also quite inadequate, even in some sectors where a clear and predictable regulatory framework is essential. Many sectors that require regulation urgently remain unregulated or under-regulated or inappropriately regulated. It is extremely important to identify the sectors that need regulation and put an appropriate regulatory framework in place. In many cases, regulation is still in the hands of line ministries themselves or some agency under them. This lack of sufficient autonomy not only affects proper functioning, it also creates problems of conflicts of interests. In many sectors, state owned enterprises are operating simultaneously with private enterprises. As a result, the regulating ministry or department is also the owner of some of the market players. It is difficult to expect regulatory impartiality in such a situation. If at all it becomes difficult to create an independent regulator due to political economy reasons, care must be taken to avoid conflict of interest situations. For example, if the Ministry of Telecom continues to hold sufficient influence on the telecom regulator, the state owned enterprise under the same ministry must not be responsible for telecom service provision. They may be shifted to some other ministry such as Ministry of Industry or say, Ministry of State Enterprises. Nevertheless, the regulators should be given sufficient functional autonomy. This is not to say that the Government or the Ministry should not have any business in this regard, but that that should happen only in extreme situations.

Governments in many developing countries are reluctant to adopt and implement a competition law with the pretext that the business is not yet ready for it. However, our survey in the 7Up3 countries indicates that, this may not be the case. It comes out from the survey that majority of all stakeholder groups including businesses people in these countries seem to be willing to accept competition law. Hence, if governments adopt and implement competition law taking them, along with other stakeholders, into confidence, there should not be any major problem.

It is also well recognised now that a competition law delivers desired outcomes only if it is complemented by appropriate consumer protection and sectoral regulatory laws. So much so that many countries have now adopted a hybrid law that addresses both competition and consumer protection issues. However, consumer protection law does not exist in some of the countries, and some of them are not even considering it. Even in countries, where it exists, the implementation of the same is not considered to be important by the government.

In sum, all these countries need action in areas of competition law, consumer protection law and other regulatory laws. They need to look at the issues in a comprehensive manner and should try to plug all the gaps in this regard.

In smaller countries like Botswana, Namibia, Malawi, and Mauritius, it might be useful to include competition and consumer protection in a hybrid law. Or they might have different laws to be implemented by one agency. A similar approach can be taken in terms of sectoral regulation as well. Different regulatory laws for different sectors can be implemented by a single agency. This would help in better allocation of resources both financial and human. Such an approach can also help in inter-sectoral learning as well as resolving interface problems to a great extent. One must of course be careful to see that one agency does not become overloaded.

As indicated earlier, when it comes to setting enforcement priorities, socio-economic characteristics of the country should play a major role. In a predominantly agricultural country with widespread poverty, the abusive practices of the monopsonistic buyers imposed on the farmers need to be addressed, as against in a developed country where this sector is more or less ignored in this regard as agriculture contributes just about five percent to GDP and the governments tend to address the problems of the sector through subsidies rather than competition policy. In fact, such practices may simply be ignored as they often benefit the consumers at the cost of the producers. Indeed in developing countries often it is difficult to distinguish between producer and consumer interests as many of the producers or sellers are not big corporations but self-employed sellers. It may, however, be noted in this context that in the US the antitrust policy originated precisely to tackle these kinds of problems.

Another related issue is the types of practices that are considered anticompetitive practices. As per the prevailing paradigm in the US, only price-fixing and bid-rigging are taken seriously. However, the stakeholders in the 7Up countries were asked to comment on several types of practices that could be considered anticompetitive. Apart from these two practices, the stakeholders also expressed concerns over exclusive dealing, price discrimination and resale price maintenance. This has implications for enforcement priorities as well.

Regulatory reforms policies in these countries seem to have been an amalgam of regulation, administrative intervention and political decision with the business

lobby working as a strong pressure group. Consumer lobby is almost non-existent or has by and large been bypassed in the process, except in relatively fewer cases where consumer concerns have been highlighted by the media. The problem is exacerbated by the fact that the capacity of other stakeholder groups is also limited. As we have seen in our survey, consumer and other civil society groups are generally less aware in these countries compared to policy makers and businesses. Such asymmetric power equations may lead to political capture of regulation or capture by producers group.

The challenge, therefore, lies in making the markets more competitive and in creating independent effective regulatory institutions that address market failures, fairness and distributional objectives. The response to such challenges lies, to a great extent, in adequate capacity building of the regulators, policy makers and other stakeholders.

To sum up, the following key issues can be highlighted that the national governments, regional authorities and development partners need to address in order to ensure the evolution and implementation of a healthy competition culture in ESA.

- Need for hybrid agencies administering competition and consumer protection legislations, instead of having separate agencies for the purpose in small countries – a case in mind is Malawi. In Malawi, the administration of the competition legislation (of 1998) begun only recently (year 2005) from an Interim Secretariat of the competition authority, however, there has been no movement forward with regard to the Consumer Protection Act (enacted in 2003). There is a certain lack of synergy between the above two acts, which raises the issue whether having an integrated Competition and Consumer Protection Act (and an agency to administer the same) would be a more efficient arrangement in the country.

Political economy issues play a vital role in matters related to competition policy and law administration:

- *Uganda* Competition Bill remains standstill, as there has been no movement forward with respect to the Bill that was scheduled to be tabled before the Parliament in 2005. However, the term of the country's 7th Parliament ended before this and the draft has been sent back to the Ministry of Tourism, Trade & Industry;
- Case of *Mauritius* Competition Bill: The new Government of the country ushered in a new draft of the Competition Bill in 2006. However, the draft was subsequently rejected and the country has embarked on a process of preparing a fresh draft; and
- Botswana presents a good example of evolving the right regulatory environment for competition administration. The country drafted a Competition Policy, and then embarked on the process of developing a competition law. However, one check needs to be done to ensure that the Competition Legislation is constructed with the inputs of national stakeholders, and does not merely depend upon the perception of an external/international expert who prepares the legislation without the requisite due diligence and extensive in-country consultations.
- Building greater public awareness is necessary – especially by demonstrating to various stakeholders the benefits from an effective competition legislation, which helps protect the interest of consumers as well. The government has to take a big share of the responsibility to achieve this target for promoting a competition culture, and ensure participation of other stakeholder groups in the process.
- Need to explore the possibility to establish a 'Competition Fund' under a Competition Law to support consumer awareness building activities on competition issues.
- It is imperative to develop the capacity of the civil society to complement the efforts of the competition authority in a country, given the constraints of resources (human and financial), which seems to be an innate weakness of competition authorities of eastern and southern Africa (like most other countries of the developing world).
- Competition Authorities should have an elaborate 'Public Relations/Communications Strategy' to garner public support for implementing the competition law.
- A process of dialogue between 'government – civil society – businesses' is crucial for developing a healthy competition regime. Civil Society (especially Consumer Organisations) should be encouraged to facilitate this dialogue. This, in addition to catalysing a useful discussion on competition policy and law, would also strengthen the consumer movement in ESA region.
- Independent regulators need to be promoted, where the regulators could function independent of their respective line Ministries. The regulators need not be totally independent of the government. However, putting a regulator and the relevant sate owned enterprises under the same line ministry must be avoided.

Note: This chapter has been researched and written by Nitya Nanda. The author is grateful to Eleanor Fox (Professor, New York University, US) for her valuable comments. Inputs have also been received from the members of the Internatinal Advisory Board of CUTS C-CIER, the Project Advisory Committee members and country partners. Any remaining mistakes are the author's own.

Chapter 2

Competition Scenario in Botswana

Introduction

While Botswana does not have a Competition Law, a Competition Policy was passed in Parliament in August 2005, and is expected to pave the way for the development of a Competition Law. This Report, therefore, attempts to profile competition policy and law related issues in Botswana. The Report is organised as follows:

- Background of Study
- Objectives
- Methodology & Scope of Study
- Country Profile
- Policies Affecting Competition in Botswana
- Laws & Regulations Affecting Competition in Botswana
- Nature of Market Competition
- Survey Results
- National Competition Policy for Botswana
- Regional Integration
- Conclusion

Background of Study

Globalisation has led to integration of markets. In Africa, national markets have been integrating through three regional bodies, viz., the COMESA, the SADC, and the EAC, with considerable geographical overlap. As a response to forces of globalisation many countries of the world have adopted new policies of trade liberalisation, deregulation, and privatisation. While developing countries like Botswana continue to remodel their state-dominated economies into market economies, new challenges are emerging from these processes. One of them is to strengthen the functioning of market forces in an appropriate manner. In this context, the need for an effective competition policy and law to achieve the maximum benefits from the process of liberalisation has been emphasised in several quarters.

However, it is apparent that not much is known about competition issues in many African countries. Responding to this need, CUTS initiated this study under the auspices of a regional Project entitled 'Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa'. The Project covers seven countries of the region: Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia, and Uganda. The study is expected to help different stakeholders understand competition concerns in Botswana.

Objectives

As per the terms of reference, the key objectives of this study are to:

- conduct an evaluation of the competition concerns, including their regional dimensions, faced in Botswana and the existing architecture for dealing with those concerns; and
- develop the capacity of national stakeholders including the policy makers, regulators, CSOs, especially consumer associations and groups, academicians and the media through a participatory process to understand and appreciate the country's prevailing competition concerns.

Methodology & Scope of Study

The following is a description of the approach employed to assess competition concerns in Botswana. The methodology employed included two main activities, namely, data collection and review of several documents that may shed light on competition issues in Botswana.

The study targeted three main categories of respondents: business, government, and civil society / consumers. The requirement was that 50-75 respondents be interviewed but the study managed to benefit from 48 respondents (16 from the government, 16 from the private sector and 16 from civil society), which by any standard is a good response rate. The respondents were randomly sampled from government ministries, the private sector (the Botswana Confederation of Commerce Industry and Manpower members), and civil society (the Botswana Coalition of Non-governmental Organisations' members and the general public). The study focused itself in Gaborone and surrounding areas.

The study used a combination of both self-administered questionnaires and interviewee-administered questionnaires with occasional followups. Extensive literature review was undertaken, among others, policies, regulations, and laws affecting competition in Botswana as well as previous related studies in Botswana.

The study was undertaken on the background of serious limitations. These included;

1. ***Financial Constraints***: The study had serious financial constraints, which limited the geographical coverage of the study to Gaborone and surrounding areas.

2. ***Representativeness***: The fact that the study focussed mainly in Gaborone makes it less representative of the entire country, although there is no immediate reason why perceptions about anticompetitive practices should vary greatly between urban and rural areas.

3. ***Comparative Study***: As a comparative study between different countries, the study design had to be the same for all the countries to allow for comparisons. While this is a welcome innovation as it allows for benchmarking and comparisons, it did not allow for adequate flexibility to take into account differences between countries.

4. ***Questionnaire Design***: Coupled with financial constraints, the questionnaire design did not allow one to adequately measure competition within the market, but was only suited to capture perceptions about the state of competition in the market. Measuring competition in a given market requires data that would allow the calculation of concentration indices.

5. The study was very broad, requiring respondents to think in broad terms and the sample was very small. It is difficult to make generalisations from a small sample. This means that while results from this study are indicative of the Botswana scenario, caution is required in their interpretation. It is unlikely that respondents would know what is happening within the entire economy. Instead, it is more likely that respondents would be a lot more conversant with what is happening within an industry in which they operate, than the broad economy. It is expected that a more focussed study in the future would address the above limitations.

Country Profile

Botswana is a landlocked state bordered by South Africa to the South and Southeast, Zambia and Zimbabwe to the Northeast and Namibia to the North and West. The country covers an area of 582,00 km. The climate is sub-tropical, ranging from continental to semi-arid.

The country has a population of about 1.7 million people (2001 estimate), with the eastern part where major towns are located being the most concentrated in the country. Between 1971 and 1981, the rate of population growth was 3.5 percent per annum, while it was 2.7 percent and 1.7 percent per annum between 1981 and 1991, and 1991 and 2001, respectively.

At independence (in 1966), Botswana was one of the poorest countries in the world. The dominant economic activity in the country was cattle rearing. However, the discovery of diamonds in 1967 brought rapid and sustained growth, allowing remarkable advances in both social and physical infrastructure. The economy has experienced continuous growth since then.

From 2001 onwards, Botswana has maintained Investment Grade A Sovereign Credit Ratings, with a stable outlook by both Moody's and Standard and Poor's, which reflect the country's strong public sector balance sheet and political and macroeconomic stability. These ratings have been the highest in Africa ever since Botswana enlisted for such ratings from 2001. In addition, Botswana has been rated by the Heritage Foundation, in collaboration with the Wall Street Journal as among the top 30 countries in the world (ahead of countries such as Spain and Norway) and number one in Africa with respect to economic freedom.

However, these positive attributes of the Botswana economy continue to be undermined by the challenges posed by HIV/AIDS and related diseases such as tuberculosis, with about infection rates of 17.3 percent of the entire population and about 37.4 percent of pregnant women between 15 and 49 years.

Policies Affecting Competition

There are some policies that may encourage or adversely affect competition in the market. Below is a discussion of such policies.

Trade Policy

Southern African Customs Union (SACU), 2002

The main legislation affecting foreign trade in Botswana is the SACU agreement. Alongside South Africa, Namibia, Swaziland, and Lesotho, Botswana is a member of the SACU. Thus, Botswana's tariff policy is governed by SACU.

SACU imposes a common tariff (customs and excise duties) on goods imported from third countries, while goods circulate duty-free within SACU members. Thus, by virtue of being a member of SACU, Botswana imposes a SACU duty on all goods coming from non-SACU members, which may be seen as disadvantaging or rendering such goods uncompetitive within the Botswana market, relative to goods coming from within SACU.

On account of protection of infant industries, the SACU agreement allows Botswana, as a temporary measure, to levy additional duties on goods imported into the country from SACU members provided that such duties are levied equally on goods grown, produced or manufactured in other parts of SACU and goods that were imported into other SACU members from non-SACU members, and later imported into Botswana. Such additional duties may also be levied on goods imported from non-SACU members. Such a provision, though temporary, gives local infant industries an unfair competitive edge over imports. However, it must be emphasised that the protection is temporary (eight years) and it is meant to help infant industries gain ground before exposing them to competition. Operational and well-established companies that have benefited from this clause include Kgalagadi Soap Industries, a company specialising in soap production, a beer-producing companyby the name of Kgalagadi Breweries, and Bolux Botswana, a company specialising in bread products.

There are however, other aspects of Botswana trade policy that may be seen as encouraging Competition. These include:

The World Trade Organisation (WTO) Agreement, 1994

Botswana has been a member of the WTO since its inception in December 1994. Thus, in acceding to the WTO agreement, Botswana acceded to the General Agreement on Trade in Services (GATS). Under GATS, Botswana has already made commitments on the treatment of foreign providers in a number of sectors. A commitment in a services schedule is an undertaking to provide market access and national treatment for the service activity in question on the terms and conditions specified in the schedule. Thus, Botswana has opened up its market equally to all members of the WTO within the following sectors:

(a) business services;
(b) professional services including architectural services, engineering services, integrated engineering services, medical and dental services, veterinary services, services provided by midwives, nurses, physiotherapists, paramedical personnel, and other medical services;
(c) computer related services, particularly consultancy services, installation of computer hardware, software implementation services, data-processing services, and database services and maintenance, and repair of office machinery and equipment;
(d) research and development services relating to social sciences and humanities (including law and economics);
(e) real estate services involving own or leased property, or on a free or contract basis;
(f) other business services, particularly maintenance and repair of equipment (excluding maritime vessels, aircraft or other transport equipment) and translation and interpretation services;
(g) communication services inclusive of commercial courier services; and
(h) tourism and related services inclusive of hotel and restaurant catering, and travel agencies, and tour operators.

Southern African Development Community (SADC)

Botswana has been a member of SADC since 1980. While the objectives of SADC were to reduce dependence on apartheid-driven South Africa, the objectives of post-apartheid SADC are geared towards promoting regional cooperation and integration towards a single regional market. To achieve this, SADC seeks to develop policies aimed at the progressive elimination of barriers to free movement of capital, labour, goods and services (trade) and to mobilise support for national and regional projects.

SADC has, therefore, developed a Trade Protocol in 2000, which aims to establish a Free Trade Area (FTA) in the SADC region and provides for intra-SADC trade liberalisation, with the removal of non-tariff barriers (NTBs) within eight years. Thus, Botswana's trade policy in the context of SADC has opened up the Botswana market for goods from other SADC member states, which has essentially encouraged competition within the Botswana market.

Botswana-Zimbabwe Trade Agreement, 1950s

While this agreement has its origin in the 1950s, the current Botswana-Zimbabwe Trade Agreement was signed in October 1988. The agreement provides that trade is generally to be free of custom duties and quantitative export and import restrictions. The agreement states that in order to qualify for such treatment, goods must meet some qualifications, such as rules of origin (RoO) and related documentation procedures. For manufactured goods to meet the requirement for RoO, they must have 25 percent or more of local content. Calculations for the local content include the cost of materials grown, produced, or manufactured in Botswana or Zimbabwe that, are in turn used in the manufacture of goods. The definition excludes managerial salaries and locally-owned profit. It is, therefore, generally considered stringent

and may be seen as restricting trade rather than facilitating trade, and hence not encouraging competition as one would expect of a trade agreement.

Reservation Policy

Botswana reserves some economic activities for citizens to create economic opportunities and encourage their participation in the economy. Competition from foreign companies is restricted in some areas of commercial manufacturing, construction and services activities. New licenses are reserved for citizens in the following commercial activities; taxi services, butcheries and sale of fresh products, security guard services, hawkers and vendors, dairy, small general trading, petrol filling stations and bottle stores and bars (other than those in hotels), general trading (except for chain stores and franchises), non-specialised and unsophisticated clothing and footwear shops. Existing firms owned by non-citizens are allowed to continue their business not involving technologies or high technical skills.

Some industrial activities reserved for citizens include; uniforms, baked bricks, ordinary cement and sorghum milling, ordinary bread baking, school furniture, and burglar bars.

Certain aspects of road contract and railway maintenance are also reserved for citizens. These include maintenance of roads, fencing, drainage and culverts, maintenance of road reserves, transport and plant hire, carting gravel, bush clearing, road marking, resurfacing bitumen roads and bridge painting.

In addition, under the Local Procurement Programme, 30 percent or less of government purchases are reserved for resident manufacturers falling within the small and medium scale category. To qualify, firms must have 25 percent local content and meet at least two of the following criteria:

i. annual turnover between P0.2mn (US$0.03mn) and P5.0mn (US$0.08mn);
ii. less than 200 employees, and investment in plant of between P0.5mn (US$0.03mn) and P5.0mn (US$0.08mn). There must also be at least one other firm producing the same products, with different directors and shareholders. While all the above have other good intentions, they restrict competition.

(P=Botswana Pula; 1P=0.16 US Dollar)

Laws and Regulations Affecting Competition

Both this study and the Economic Mapping Study, which informed the development of Botswana's competition policy have identified a number of laws (56 Laws) and regulations that have an impact on competition in the country. The Economic Mapping Study was undertaken to inform the development of Botswana's competition policy.

The Companies Act, 1942

The Companies Act[11] is the first key statute regulating market entry or the establishment of a business in Botswana. The Companies Act provides rules and regulations on the formation, registration, management and administration and dissolution of various types of companies.

A review of the Act was commissioned with a brief that underlined the need for a legal and regulatory framework that would encourage a competitive or less restrictive commercial environment and would facilitate domestic commercial activity and the flow of foreign investment. Also, required was a regulatory framework 'more friendly' to small businesses that would complement objectives of the policy on promotion of the role of Small, Medium and Micro Enterprises **(**SMMEs) in the economy (SMME Policy, 1999).

The review of the Act has been completed. A new law is in the offing, proposing drastic changes of the rules, regulations and procedures on incorporation and registration, management and administration of some companies, and shareholding and dealings in shares.

The Industrial Development Act, 1998

This Act regulates entry into manufacturing businesses that are not otherwise regulated by specific pieces of legislation. The Act establishes an Industrial Licensing Authority responsible for, amongst others, the supervision of industrial development, and for the issue of licences for the manufacture of products offered for sale in Botswana.

The Authority can invoke for refusing to grant a manufacturing licence are the following:

[11] Indications are there of a new Act. Attempts to have a look at the Act have been fruitless. However, it is inconceivable that areas discussed above may have changed drastically.

- that the capital, technical skills or raw materials available are, in the opinion of the Authority, inadequate to secure the successful establishment and operation of the enterprise, and failure of the applicant's enterprise might prejudice the successful development of the industry concerned;

- that a licence for the manufacture of the proposed product 'has already been granted to some other person in respect of the same part of Botswana and such licence is an exclusive licence';

- that the granting of the licence, in the opinion of the Authority, would not be 'in the best interests of the economy or public will of Botswana or of the particular industry concerned'; and

- that the applicant has already been issued with or applied for licences in respect to four or more manufacturing enterprises under this Act and could only be considered for a further licence with the written approval of the minister.

These grounds reflect an attempt to affect an industrial development policy that has since undergone important revisions and reorientation.[12] Botswana's Industrial Development Policy still is broadly concerned with diversification of the economy. The revised policy takes into account changes to domestic and international trading environments brought about by globalisation and regional and multilateral trading arrangements. It advocates reorientation of industrial development towards the opportunities and challenges presented by these developments. Exclusive manufacturing licences are not compatible with the new, highly competitive international trading environment and, particularly, with Botswana's commitments under the WTO. The revised policy recommends amendments to the Act to remove provisions relating to the grant of such licences.[13]

There are other aspects of the Industrial Development Act that should be revisited together with provisions on exclusive licences and some of the grounds are the duration of licences issued under the Act, and the policy of reserving some manufacturing businesses for citizens of Botswana. Licences are granted for a period of one year, renewable from year to year. This is probably too short a period and a strain on the administration of the licensing system. The reservation policy may serve other goals articulated in the policy on SMMEs, such as: development of citizens' entrepreneurial skills, empowering citizens to control increasing proportions of economic activity in the country, encouraging economic diversification and creation of sustainable employment opportunities. But it so far has had the distasteful effect of allocating mostly menial activities to citizens.

As the SMMEs policy also acknowledges, it has the potential of inhibiting the flow of foreign capital, technical and managerial skills into the reserved sectors, and of encouraging fronting, and other illegalities. The SMMEs policy recommends relaxation of the reservation policy, so that joint ventures between citizens and non-citizens may be allowed in some medium scale enterprises, as long as citizen partners will have not less than 45 percent of the beneficial shareholding. It is better to pursue policies like citizen empowerment through measures other than regulation or restriction of entry into certain lines of businesses.

The Trade and Liquor Act of 1993

This Act has been under review for some time.[14] The Act regulates entry into businesses for the supply of goods and services, mostly to end-users. It establishes a national authority and local licensing authorities for the issue of licences in respect of trades or businesses such as import and export, agency, auctioneers, pharmacy, general dealing, wholesale and retail, supermarket, motor dealers, garage and workshop, petrol stations, dry cleaning and laundromats, hairdressers, and restaurants.[15] A distinct part of the Act also regulates the sale or supply of intoxicating liquor in specified places.[16]

The grounds for rejecting an application for a trade licence include: (a) that the applicant is a minor; or (b) that the issue of a licence would conflict with town planning or zoning schemes or health or other regulations[17]; (c) that licenses have to be renewed within 12 months, that the person is fully conversant with the business; and (d) certain types of licences or businesses are reserved for citizens of Botswana.

12 Republic of Botswana, *Industrial Development Policy for Botswana*, Ministry of Commerce and Industry, Government Paper No. 1 of 1998, Government Printer, Gaborone.

13 Republic of Botswana, *Industrial Development Policy*, para. 3.18. p. 12.

14 As this report is written a motion aiming at deferring some aspects of this Act is being discussed in Parliament. Details of the Act are not yet available to the public.

15 Sections 3, 4, 5 and 7.

16 Part IV, Sections 28 to 46.

17 Section 14 as replaced by section 11 of the Trade and Liquor (Amendment) Act, No. 11 of 1993.

Another issue of concern relates to the sweeping powers of the Minister to suspend, cancel, or withdraw a licence at any time if, in his/her opinion, this is in the interest of the inhabitants of a particular area or of Botswana generally. It is asserted that the Minister "shall not be obliged to furnish reasons for any decision taken by him in terms of this section, and such decision shall be final and shall not be questioned in any court". In order to promote a vibrant, competitive trading environment, this provision could be replaced by one suggesting that a tribunal or a competition regulator shall consider appeals against decisions of the Minister or any other licensing authority.

Public Procurement and Asset Disposal Act of 2001

This Act is mainly concerned with procurement of works, supplies and services for the government and disposal of public assets. It provides for a board, whose functions and powers include ensuring that some of the following principles are observed by procuring entities:

(a) an open, competitive economy and changing external obligations in relation, generally to trade, and specifically to procurement, which dynamically impacts on a continuous basis on domestic procurement policy and practice;
(b) competition among contractors by using the most efficient and competitive methods of procurement or disposal to achieve the best value for money; and
(c) fair and equitable treatment of all contractors in the interests of efficiency and maintenance of a level playing field.

However, Section 66(1) of the Act, which states that "Pursuant to its economic and social objectives, the government may from time to time introduce reserved and preferential procurement and asset disposal schemes, which shall be consistent with its external obligations and its stable, market oriented, macroeconomic framework". A disturbing observation is that while such schemes are expected to be time bound and non-discriminatory within targeted groups, they will exclude participation of some players. This may be construed by some as uncompetitive, and may be deemed to contradict the envisaged Competition Policy and Law, as well as the principles of competition outlined above.

Telecommunications Act of 1996

The Telecommunications Act regulates the provision of telecommunication services. Unlike, the Public Procurement and Asset Disposal Act discussed above, the Telecommunications Act has no profound citizen preference. The Act is also more explicit on the promotion of competition in the sector. Section 17(2)(c) states that, the regulator, the Botswana Telecommunications Authority shall "promote and maintain competition among persons engaged in commercial activities for, or in connection with the provision of telecommunication services, and promote efficiency and economy on the part of persons so engaged".

Section 20(1) states that the Authority "shall be responsible for monitoring competition in the telecommunications sector". Section 20(2) gives the authority the power to report any contravention to the Attorney General who shall then deal with any such contravention, as he considers appropriate.

In addition, Section 48(1) states that telecommunication services shall, as far as practicable, and within the framework of the licensing system established by the Act, be provided on a competitive and non-discriminatory basis.

While this Act is pro-competition, it has serious overlaps with a model competition law. For example, like a competition law, in addition to the above, the Act prohibits, among others, forming cartels, use of dominant position in a market for the purpose preventing entry into the market, collusion between operators etc. This means that the passing of the competition law and the establishment of a Competition Authority will necessitate the revision of this Act. The Act may require surgery to transfer the competition functions of the BTA to the Competition Authority.

Consumer Protection Act of 1998

Botswana's Consumer Protection Act is fairly new (1998). The Act establishes a Consumer Protection Office, under a relevant government ministry. The main functions of the office include, among others, investigating 'unfair business practices', and would preside over the settlement of disputes relating to 'unfair business practices' . A business practice is described as such. It includes:

(a) any business agreement, accord or undertaking of a business nature;
(b) any scheme, practice or method of trading, including any method of marketing or distribution; or
(c) any advertising, type of advertising, or any other manner soliciting business.

It follows, therefore, that undertaking any of the above in an 'unfair' manner constitutes violation of the Consumer Protection Act. It is anticipated that the same would be in violation of the Competition Law once in place. This Act may, therefore, require substantial re-writing in light of the provisions of the Competition Law, once in place. Like in the case of the Telecommunication Policy, the Act may require surgery to transfer the competition functions of the Consumer Protection Office to the Competition Authority.

Botswana Meat Commission Act of 1965

The Act gives the Botswana Meat Commission statutory monopoly over the export of meat, canned meat, and live cattle. This is clearly anticompetitive as it completely denies any interested party willing to enter the meat export market to do so.

Road Transport Permits, CAP 69:03 (17)(3)

The Transport Secretary may attach to a public service permit such conditions as he may think fit for securing that:

(a) Fares are not unreasonable. Market forces thus do not control fares. A transport operator may therefore not reduce prices if he deems it fit to do so.

(b) Where desirable in the public interest the fares shall be fixed as to prevent *wasteful competition* with alternative forms of transport, if any, along the routes specified in the permit. It is against this background that an aspiring operator may be denied the opportunity to enter the market even if he is convinced that it would be profitable to do so.

Banking Act, 1995 Section 9(5)

No Bank shall open (or keep open) or close (or keep closed) an existing place of business, or change its location, without the prior written approval of the Central Bank. Thus, it can be argued that this has a potential of preventing a bank to do business in an area that best suits it, if it wants to compete with its rival.

Market and Competition

Market Concentration

Market power is a central concept in the economic assessment of competition; but determining whether a firm has market power is not straightforward. While there are many measures of market power, one needs to be cautious about drawing direct inferences about market power from such measures. This section draws heavily from the Economic Mapping Study, where market power was measured by the turnover of the three largest firms in an industry relative to the total turnover in the industry; a measure known as the 3-Firm Concentration Ratio (CR3). It is assumed that not much change has happened to the rations, thus the results are treated as current. Based on this measure, market characteristics are classified into five categories in table 2.1.

Table 2.1: Concentration Categories and Market Characteristics

Concentration Category based on CR3	Market Characteristic
0 – 20	Highly competitive without significant market share
20 – 40	Competitive with significant market share for three largest firms, but no dominant market share
40 – 60	Generally competitive, but three largest firms may have dominant market share and are likely to abuse market power
60 – 80	Concentrated - possibility of abuse of market power
80 – 100	Highly Concentrated - extremely high possibility of abuse of market power

The results (Table 2.2) indicate high levels of concentration in the long distance transport sector (CR3 of 65.7 percent in 2000) followed by Hotels and Restaurants (CR3 of 64.8 percent) and Agriculture (CR3 of 63.6 percent). The Manufacturing and Finance sectors had concentration ratios of between 50 and 55 percent. The least concentrated industries and probably the most competitive industries were Wholesale and Retail Trade (26.8 percent) and Construction (40 percent). It is important to note, however, that low concentration ratio does not in anyway guarantee lack of anticompetitive practices in the market. Instead, it simply shows lack of dominance in the market, which by extension reduces the chances of practices such as price fixing and price discrimination.

Table 2.2 : Market Concentration by Industry

Industry	CR3		
	1995	1997	2000
Agriculture	96.0	55.1	63.3
Manufacturing	33.1	43.8	50.2
Hotels and Restaurants	66.2	63.5	64.8
Construction	59.2	37.7	40.0
Finance	51.4	56.2	55.0
Transport	69.2	65.4	65.7
Wholesale and Retail Trade	34.6	29.5	26.8

As we assess individual sub-sectors' concentration ratios, we will realise that they are relatively higher than the sectors' ratios. This is not surprising as the sectors' ratios are essentially calculated from a denominator that combines all sub-sectors and the denominator only includes the top three firms.

Table 2.3: Market Concentration in Agriculture			
Sub-sectors	**CR3**		
	1995	1997	2000
Commercial Crop Farming	76	80	82
Commercial Livestock Farming	83	81	82
Commercial Livestock Farming	76	80	87
Commercial Wildlife Farming	100	100	100

Agriculture

The Agriculture sector is the smallest sector in terms of number of firms.[18] It has 91 registered firms (2.2 percent of all registered firms in the Botswana market), making it least an intense industry. Out of the 91 firms, 29 are commercial crop farming, 46 are commercial livestock farming, 14 are commercial poultry farming and two are commercial wildlife farming. However, we were only able to collect sales figures for six firms.

Based on available data, the agriculture sector is highly concentrated. All the four sub-sectors have concentration levels of at least 70 percent (Table 2.3). However, this does not necessarily reflect the actual level of market concentration in these sectors; it is mainly due to the extremely small sample size and the lack of data on most of the firms included in the sample. Only one firm in each sub-sector had its sales figures available with the Tax Department. In most economies, the agriculture sector is the most difficult industry to fully capture quantitatively in terms of its domestic competitiveness. The industry is characterised by about 500 commercial farmers who are given special tax treatment; hence, they may not file their tax returns, thereby making it difficult to fully capture the competitiveness of the industry. The situation is made difficult also because of the way in which tax returns are compiled: tax returns are currently compiled manually; and in a number of cases, the files are missing.

Manufacturing

The manufacturing sector is the second largest sector in terms of number of registered firms (with 25.2 percent of the registered firms in the Botswana market). It has 1,042 registered firms. The sector is composed of 20 sub-sectors. Sales figures were collected for only 76 firms, which is small compared to the number of registered firms. Like agriculture, the industry is traditionally composed of a few large firms and a large number of small and medium size firms that usually do not correctly file their tax returns or do not file their tax returns. This makes the information obtained from tax returns on turnover less accurate.

Table 2.4: Market Concentration in Manufacturing			
Industry Sub-sectors	**CR3**		
	1995	1997	2000
Meat and meat products	100.0	100.0	100.0
Dairy products	100.0	100.0	100.0
Grain mill products	98.0	98.5	99.1
Bakery products	63.1	65.2	77.8
Other food products	99.8	98.6	45.8
Beverages	100.0	100.0	100.0
Textiles	94.3	95.6	92.2
Clothing and other wear apparel	83.6	88.2	92.0
Tanning and leather products	100.0	100.0	100.0
Wood and wood products	99.0	98.5	92.4
Paper and paper products	100.0	100.0	100.0
Printing and publishing	69.0	67.4	67.0
Chemical and chemical products	76.7	72.1	69.9
Rubber and plastic products	86.3	83.0	72.0
Non metallic mineral products	75.7	54.3	69.9
Basic metals	99.0	99.0	98.0
Fabricated metal Products	84.7	75.7	76.8
Office accounting and computing machinery	100.0	100.0	100.0
Furniture (all items excluding wood and mattresses)	81.5	71.8	68.9
Manufacturing of jewellery	100.0	100.0	100.0

Based on the sample information, the manufacturing sector is highly concentrated (Table 2.4). This appears to be a result of the structure of the industry. The manufacturing industry has 20 sub-sectors and 76 firms, which gives it an average of 3.8 firms per sub-sector. Therefore, it not surprising that most sub-sectors have three-firm concentration ratios of at least 70 percent.

Hotels and Restaurants

The Hotels and Restaurants Industry is the fourth largest in terms of number of registered firms. The industry has 275

18 Throughout the report, size is determined by the number of registered firms in a particular industry.

Table 2.5: Market Concentration in Restaurants			
Sub-sectors	**CR3**		
	1995	1997	2000
Hotels and restaurants	84.1	86.1	92.5
Restaurants, cafes and canteens	73.6	62.1	59.6

registered firms (6.6 percent of all registered firms in the Botswana market). The industry is divided into three sub-sectors: Hotels and Restaurants (with 44 registered firms); Restaurants, Cafes and Canteens (214); and Bars and Shebeens (17). The industry depicts a picture (Table 2.5) of highly concentrated sectors in Hotels and Restaurants (92.5 percent) and Bars and Shebeens (89.8 percent). Restaurants, cafes and canteens are becoming more competitive. The concentration ratios have been decreasing from 73.6 percent in 1995 to 62.1 percent in 1997 and down to 59.6 percent in 2000 (Table 2.5).

Construction

The Construction Industry is the third largest industry with 569 registered firms (representing 13.7 percent of all registered firms in the market). The industry is divided into four sub-sectors: Construction of Building and Houses; Construction / Civil Engineering; Building Installation Work; and Renting of Construction or Demolition Equipment. The Construction of Buildings and Houses is the largest sub-sector with 341 registered firms. Not surprisingly, the smallest sub-sector is the Renting of Construction or Demolition Equipment. Construction and demolition equipment is expensive.

The sample data indicate that the construction industry shows high levels of concentration (Table 2.6). As might be expected, the construction of building and houses and construction / civil engineering are the most competitive within the industry, even though the levels of concentration are still very high (around 70 percent).

Table 2.6: Market Concentration in Construction			
Sub-sectors	**CR3**		
	1995	1997	2000
Construction of houses	86.0	70.7	70.1
Construction / civil engineering	79.0	77.4	69.1
Building installation work	98.2	95.4	93.0
Renting of construction or demolition equipment	90.3	92.7	88.7

Finance

The Finance Industry is composed of 107 registered firms (2.6 percent of all registered firms in the market). The industry is divided into three sub-sectors: Banking Sector (with 75 firms), Insurance and Pension Funds Sector (with 21 firms) and the Securities Sector (see Table 2.7).

Table 2.7: Market Concentration in Finance			
Sub-sectors	**CR3**		
	1995	1997	2000
Banking	71.5	77.3	79.9
Insurance and pension funds	92.9	94.0	86.0

The Insurance and Pension Funds has the highest concentration in the Finance Industry. However, the levels of concentration declined from 93 percent in 1997 to 86 percent in 2000. The Banking sector also indicates a high level of concentration. Unlike in the Insurance and Pension Funds, the concentration in Banking has been on the increase since 1995. The levels have increased from 71.5 percent in 1995 to 77.3 percent in 1997 and to 79.9 percent in 2000.

Table 2.8: Market Concentration in Transport			
Industry	**CR3**		
	1995	1997	2000
Freight transport by road	77.2	74.5	76.2
Travel agents, tour operators	79.9	81.2	81.4
Passenger transport by road (excluding taxis)	81.0	86.0	89.0

Transport

The Transport Industry is the fifth largest sector with 136 registered firms (3.3 percent of all registered firms). The industry is divided into four main sub-sectors: Road Transport (Freight and Passenger), Air Transport (Freight and Passenger), Rail Transport, and Travel Agents and Tour Operators (see Table 2.8).

From the data collected, the Transport sector shows high levels of concentration. Actually, the evidence indicates no change in the concentration of Freight Transport by Road, but there in increasing concentration in Passenger Transport by road and Travel Agents and Tour Operators.

Wholesale and Retail Trade

The Wholesale and Retail Trade Industry is the largest industry in the economy. It has 1,918 registered firms (46.3 percent of all registered firms). The industry is also the most competitive in the economy. Concentration levels have been steadily declining

Table 2.9: Market Concentration in Wholesale & Retail Trade			
Sub-sectors	**CR3**		
	1995	1997	2000
Sale of motor vehicles	61.6	63.1	62.3
Maintenance and repair of motor vehicles	62.0	60.0	63.0
Sale of motor vehicle parts and accessories	93.3	88.1	88.4
Wholesale and commission Trade	52.6	44.8	40.7

from 34.6 percent in 1995 to 29.5 percent in 1997 and 26.8 percent in 2000 (see table 2.9). The industry is divided into four sub-sectors: Sale of Motor Vehicles (with 45 registered firms); Maintenance and Repair of Motor Vehicles (the second largest sub-sector with 161 registered firms); Sale of Motor Vehicle Parts and Accessories (with 85 registered firms); and Wholesale and Commission Trade (the largest sub-sector with 304 registered firms).

Table 2.9 indicates that the Wholesale and Commission Trade sub-sector is the least concentrated within the industry. The concentration levels have decreased between 1995 and 2000, from 52.6 percent to 40.7 percent. The other sectors have not shown any notable changes. They remain highly concentrated with Sale of Motor Vehicle Parts and Accessories having the highest level of concentration (around 90 percent).

Perspectives on Competition

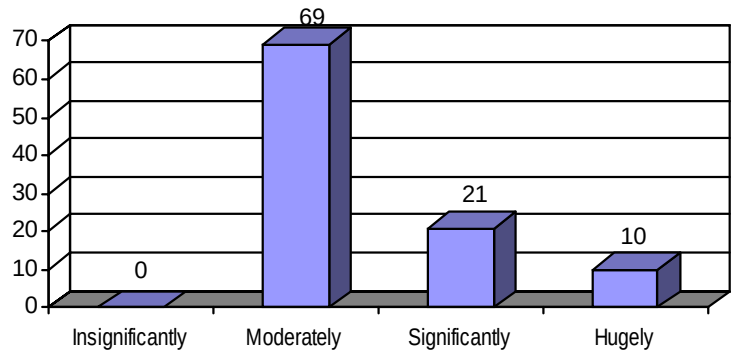
This section analyses the results from the field survey. The section is structured as follows. Overall picture; Government, Consumers and Business perspectives respectively on the competition regime in the country.

Overall Picture

Existence of Anticompetitive Practices

Respondents were asked to rate the extent to which they thought anticompetitive practises existed in Botswana. 68.8 percent of the respondents said that the existence of such practises was moderate, 20.8 percent said the existence was significant, while only 8.3 percent said the existence was huge (Figure 2.1).

Figure 2.1: Knowledge about the Prevalence of Anticompetitive Practices



This is in line with the Economic Mapping Study, which observed that there are anticompetitive business practices in the Botswana market. The question of how these practices affect consumers therefore arises.

Effect of Anticompetitive Practices on Consumers

Generally, respondents were of the view that consumers are affected by anticompetitive practices. A majority of the respondents (45.8 percent) said that consumers are significantly affected by anticompetitive practices, while 33.3 percent said that consumers are moderately affected by the practices. Only 10.4 percent of the respondents said consumers were hugely affected by the anticompetitive practices (Table 2.10).

Table 2.10: Extent to which consumers are affected by Anticompetitive practices		
Extent of impact	***No.***	***Percent***
Insignificantly	2	4.2
Moderately	16	33.3
Significantly	22	45.8
Hugely	5	10.4
Non Response	3	6.3
Total	48	100

Most Prevalent Practices

39.6 percent of the respondents identified price fixing as the most prevalent anticompetitive practice. The second most prevalent practice was said to be exclusive dealing, identified by 39.6 percent of respondents, the third most prevalent practice was said to be exclusive dealing, identified by another 39.6 percent of respondents, while 22.9 percent of respondents identified predatory pricing as the third most prevalent practice (Table 2.11).

Most Prevalent Practices by Region

Local Level

A total 29.2 percent of the respondents said that the most prevalent practice at the local region was price fixing. The second most prevalent practice at the local level is said to be market sharing (18.8 percent). The third most prevalent practice at this level has been identified as unfair trade practices (16.7 percent).

Table 2.11: Most Prevalent Practices						
Rank	**Most prevalent Practice**	**Percent of respondents**	**Second Most prevalent Practice**	**Percent of respondents**	**Third Most prevalent Practice**	**Percent of respondents**
1	Price Fixing	39.6	Exclusive Dealing	39.6	Predatory Pricing	22.9

National Level

The analysis of anticompetitive practices at the National Level (Table 2.13) reveals that the most prevalent practice is price fixing, identified by 27.1 percent of the respondents. This is in line with respondents' perceptions about prevalence at the local level.

Bid-rigging is said to be the second most prevalent practice at the National Level as identified by 14.6 percent of respondents.

Identified by 29.2 percent and 12.5 percent of respondents respectively, UTPs and price fixing are said to be the third most prevalent at the National level.

What emerges from the analysis on the prevalence of anticompetitive practices is that price fixing and unfair trade practices are the key concerns at both the local and national level. However, bid-rigging is also a major concern at the national level. This is not surprising as bid-rigging is likely to happen at the national level because the stakes are higher as contracts are much larger, which is an incentive for bid-rigging.

This is not surprising as, in recent times, the Botswana media has been awash with allegations of corrupt practices with results similar to bid-rigging, in that the tenders are alleged to have been awarded to non-deserving parties. While corruption is not theoretically defined as an anticompetitive practice and does not fall under the purview of a Competition Law, some acts of corruption can have similar implications as anticompetitive as they restrict competition in the market. An example of a case where it was alleged that the tender award defeated the spirit of competition in the same way bid-rigging would do is discussed below. The case was reported in the Botswana Gazette, November 30, 2005.

In this case, The Public Procurement and Asset Disposal Board (PPADB) is said to be considering appealing a High Court Judgment in which the Judge described the Board as attempting to "conceal important information from… the Court and to pervert the interests of justice". The Judge made the remarks in his ruling to overturn the awarding of a tender to computerise Botswana's passports and border posts to IBS-IT and instead awarded the multi-million tender to Research Solutions Integrators (Pty) Ltd (formerly known as AST Botswana).

Table 2.12: Most Prevalent Practices at the Local Level						
Rank	**Most prevalent Practice**	**Percent of respondents**	**Second Most prevalent Practice**	**Percent of respondents**	**Third Most prevalent Practice**	**Percent of respondents**
1	Price Fixing	29.2	Market sharing	18.8	Unfair Trade practices	16.7

Table 2.13: Most Prevalent Practices at the National Level						
Rank	**Most prevalent Practice**	**Percent of respondents**	**Second Most prevalent Practice**	**Percent of respondents**	**Third Most prevalent Practice**	**Percent of respondents**
1	Price Fixing	27.1	Bid Rigging	14.6	Unfair Trade practices	29.2

The case is said to have arose out of an award by the PPADB to IBS-IT in 2003 when PPADB over-ruled a Ministry of Labour and Home Affairs evaluation committee that recommended that the tender be awarded to AST Botswana because, in the opinion of the committee, the proposal from IBS-IT was "inferior" and did not meet the specifications required. The Botswana Gazette also notes that the Judge also found that the attitude of the Board "on the whole has been astonishingly risqué and veritably reticent".

The PPADB's answering affidavits are said to have been ridded with inscrutable and evasive responses, and their attitude is said to have been described as bearing all the hallmarks of a calculated strategy geared towards stymieing all efforts towards the ascertainment of the truth surrounding the award of this tender.

"On three occasions when it had the opportunity to do otherwise, the (Board) produced versions of the record which excluded relevant information material…I can only conclude in the absence of such explanation, that these were calculated moves intended to conceal important information from the Applicant and the Court and to pervert the interests of justice…".

It is said that eight companies had responded to the tender and two were subsequently short-listed. These were AST Botswana, which had tendered for P75, 8 million and IBS-IT at P36, 9 million. In evidence presented to the Court, the Botswana Gazette reports that the system proposed by IBS-IT was adjudged by the evaluation committee to be inferior to that proposed by AST Botswana. This was primarily on account of its failure to demonstrate its passport booklet production sites, security at such booklet production sites, booklet security features and adequate forgery

Box 2.1: Mini Case Study: Media Industry

This study had no intentions of undertaking in-depth sector specific analysis of competition issues. However, when conducting interviews, it occurred to the researcher that the private media companies (newspapers) were a lot more vocal about anticompetitive practices than companies from other sectors. It further occurred to the researcher that the companies' complaints emanated from their discomfort with competition from the government newspaper, the Daily news. This prompted a quick comparison of the advertisement rates of two key newspapers with that of the Daily news. Without the cost structure of the newspapers, the conclusions from this comparison should be interpreted with caution.

Advertisement rates of selected newspapers

Space	Daily News	Newspaper A	Newspaper B
F/Page (f.c.)	P4, 500s	P7, 090	P6, 765
pcm	P17.0	P18.7	P17.5

There are a number of reasons why private competitors' acrimony may be justified. (i) The daily news charges lower prices despite the fact that it does not charge readers for its paper. This may be seen as undercutting its competitors. (ii) The daily news does not have direct overheads. Its employees, office space, etc., are paid from the government treasury. Since its competitors do not have this luxury, it can afford to charge lower prices at the expense of its competitors. (iii) The Government is known to be a bad collector of debt, a sizeable proportion of which may end up as bad debt. If the daily news is a poor debt collector, there is an additional incentive to place an advert with them, as the probability of paying them is lower than that of paying its competitors, thus defeating competition.

However, the possibility of the daily news being simply more efficient cannot be ruled out without evidence from a detailed assessment of competition issues within this sector, which is beyond the scope of this study.

Table 2.14: Most Affected Sectors

Rank	Most Affected Sector	No. of respondents (In percent)	Second Most Affected Sector	No. of respondents (In percent)	Third Most affected sector	No. of respondents (In percent)
1	Retail Sector	25	Retail Sector (excluding motor sector)	14.6	Construction	14.6
2	Private Sector	18	Motor	10.4	Banking	14.6
3	Construction	16	Construction	8.3	Private Sector	8.3

detection features. The system proposed by AST Botswana on the other hand addressed these matters. The evaluation committee, it is alleged, by a majority of three to one, came to the conclusion that the AST proposal was the best bid and recommended that it be awarded the tender, even though it was higher than the Department of Immigration's budget of P52mn (US$8.58mn). It was hoped that the price could then be re-negotiated to bring it within the Department's budget. However, it is reported that when the recommendation got to PPADB, it was rejected and a hand written note on PPADB's record of its decision entitled "Reject Award to AST Botswana and award to IBS-IT in the amount of P36 982 875-20" was recorded.

According to the Judge, however, it was not clear who had signed the record, but the tender was subsequently awarded to IBS-IT. The case went to Court because AST Botswana appealed the decision to give the tender to IBS-IT. In the company's evidence to the Court, AST Botswana claimed that the IBS-IT bid did not meet the tender requirements. Ruling in favour of AST Botswana, the Judge found that IBS-IT has bid as part of a joint venture with two other companies, even though the tender documents specifically stated that the tender must come from a single entity.

The Judge also found that IBS-IT's proposal had left out the cost of training, development testing and implementation, which would have cost an estimated additional P22 million. If this was taken into consideration, IBS-IT's bid would also have been outside the Department's budget.

According to the Judge, leaving out the costs of part of the tender requirements in excess of P22 million gave IBS-IT an unfair advantage and had been "deliberately left out." "By accepting IBS-IT's non-compliant bid", ruled the Judge, "PPADB conferred an unfair advantage on it. The reality of the matter is that both sides were beyond the Department's budget. IBS-IT gained an unfair price advantage over its competitors at the selection stage whilst simultaneously reserving the right to increase its price to cover the un-costed items after the award of the tender".

The Judge also found that IBS-IT had failed to deposit a P75 000 security guarantee. Nor had it submitted audited financial statements, another requirement of the tender specifications. In over-ruling the decision of the Board, Judge said that PPADB "is a public body funded from public resources. It performs public functions. Its officers are servants of the public. It cannot be excused from performing its duties with the transparency and openness demanded of it by both the Act and the principles of good governance, simply because it is convenient for it to do so…". The judge is said to have noted that, "There is ample evidence, of PPADB bias against AST Botswana. This initially manifested itself in PPADB facilitating a situation where IBS-IT was given a significant unfair advantage over other bidders, by being allowed to submit a bid, which did not charge for services. "Thereafter PPADB sought to conceal this fact".

Sectors Most Affected by Anticompetitive Practices

Attempt was made at identifying sectors in which anticompetitive practices occur. Asking respondents which sectors they thought were mostly affected by the practices helped achieve this (Table 2.14).

The prevalence of anticompetitive practices seems to be high within the Wholesale and Retail Trade Sector. 25 percent of respondents said that this sector is the most affected by such practices. A further 18 percent said that the sector mostly affected is the private sector (without necessarily breaking down the sector) and another 16 percent felt that the most affected is the Construction Sector. The Retail Sector is seen by 14.6 percent of the respondents as the second most affected sector. The Motor Retail and the Construction sectors are also viewed as the second most affected sectors by 10.4 percent and 8.3 percent of respondents, respectively. The Construction Sector, Banking and the broad private sectors have been identified as the third most affected sectors by 14.6 percent of respondents for the former two sectors and by 8.3 percent for the latter.

State Owned Monopolies and Anticompetitive Practices

In simple terms, a monopoly is an agent that undertakes a business activity without any competitor. It is a sole provider of a given service or product. In Botswana, there are quite a number of monopoly service providers. These include the Botswana Power Corporation (BPC), which is the sole provider of electricity in the country, and the Botswana Telecommunications Corporation (BTC), which is the sole provider of fixed telecommunications services. Respondents were well aware of the existence of state owned monopolies in Botswana. 77.8 percent of the respondents reported knowledge of the existence of such monopolies, and 8.9 percent were not aware of state owned monopoly existence in Botswana. The rest were indifferent.

65.9 percent alleged that these state owned monopolies engage in anticompetitive practices, although respondents could not readily identify which anticompetitive practices the monopolies engage in.

Origin of Anticompetitive Practices

Majority of respondents (70 percent) felt that most anticompetitive practices originate from outside the country. This is not very surprising. For example, Botswana has two mobile phone companies, Mascom

and Orange. Mascom handsets are open, meaning a customer can buy a handset from Mascom and insert an Orange simcard. On the other hand, Orange handsets are not open, meaning that one cannot buy a handset from Orange and insert a Mascom simcard. An Orange handset goes along with only an Orange simcard. Essentially, Orange practices 'Tied-selling', in that buying an Orange handset forces the customer to buy the Orange simcard even if they have a Mascom simcard. This is an anticompetitive practice that came along with a multinational.

Furthermore, in June 2005, the South African Competition Commission published a report in which it revealed that DaimlerCrysler South Africa (Pty) Ltd, BMW South Africa (Pty) Ltd and Nissan Africa (Pty) Ltd and their dealers entered into franchise and dealer agreements, which contained a number of restrictions that impact negatively on competition in the market within which they operate. The restrictions that were reportedly placed on dealers relate to, *inter alia*, the selling of new motor vehicles to unauthorised agents and the selling of new motor vehicles to exporters, imposition of minimum resale prices and price fixing.

Since the South African Competition Commission is territory bound, its investigationswere limited to South Africa. However, the findings have a potential effect on all SACU members in which the South African car manufacturers have dealers, including Botswana. The key question then is, is the Botswana car dealership industry free from such anticompetitive practices? Without detailed investigations into this sector, which can adequately be undertaken by the Botswana Competition Authority, empowered by law to do so, it cannot be ruled out that similar anticompetitive practices do not occur within the Botswana market.

This is more so that the Economic Mapping Study (2002) reported that collusion by foreign firms was found to be the major anticompetitive business practice in Botswana. The study reports that most Botswana companies felt that South African firms posed unfair competition to them, especially during tenders. Foreign companies (particularly South African firms supplying Botswana firms) quote high prices for local firms intending to participate in tenders, and they collude with other South African firms on submission of quotations (with prices relatively lower than local firms can quote), in the event deliberately causing local companies to lose tenders because they have relatively higher prices. Collusion by foreign companies is not only anticompetitive, it also inhibits progress of local companies. The study further reports complaints of Chinese companies imposing unfair competition on local companies.

Existence of Rules and Regulations to Check on Anticompetitive Practices

Asked whether there were rules, regulations or laws to check such practices, majority of the respondents (48.8 percent) said that they did not know whether such regulations and laws existed. Another 34.9 percent were of the view that there are no such laws and regulations. The remaining 16.3 percent were aware of the existence of laws and regulations aimed at checking on anticompetitive practices. This is indeed in line with reality as competition issues are new in Botswana. As noted elsewhere in this report, Parliament passed the competition policy law only in August 2005, and a significant number of stakeholders do not have a feel of what is on the ground in relation to competition issues.

Those who said they were aware of the existence of such laws cited among others, operators' licences in the Telecommunications Sector, which prohibit, among others, price discrimination. Others include commercial bank licences issued by the Central Bank, the Public Procurement and Asset Disposal Act, which aim at ensuring competition within tendering companies and the local authorities tendering process.

Implementation of Anticompetitive Rules

To establish the extent to which the anticompetitive rules were implemented, respondents were asked whether any action was taken when the rules and regulations were violated. In response, 53.1 percent of those who are aware of the existence of such rules said that sometimes action is taken while 6.3 percent said action is always taken. The other 15.6 percent said that no action is normally taken, while only 25.0 percent of the respondents noted that they did not know whether action is normally taken against violators of anticompetitive rules, regulations and laws.

Agencies that Provide Justice to Consumers

Among others, we attempted to establish respondents' knowledge and perceptions about agencies that provide justice to consumers. Some of the agencies identified include the;

(a) Consumer Protection Division of the Department of Trade and Consumer Affairs, whose mandate is to protect consumers against unfair business practices, including; providing consumers with adequate information on products, services and after sale services; aking care of, promoting and protecting the interests of consumers against any form of exploitation or ignorance, especially against malpractice in the market place. The division was singled out as providing justice to consumers by 43.8 percent of respondents.

Box 2.2: Store Credit Schemes

It's gone too far
Store credit schemes are getting out of control. Every week we hear from people who, for whatever reason, and however they've done it, are stuck with store credit schemes that are abusive, deceptive and vicious.

Whose fault is it?
Ours. Yours. Oh yes, and the stores as well. But remember, a credit agreement is between two parties – you and the store. Both parties agree, in writing, to pay lots of money in return for a product. Surely then, if we sign up for a wicked scheme we have to take some of the blame?

However!
What if the stores are not quite as open and honest as we would hope? What if they went out of their way to hide their charges? But surely they wouldn't do such a thing? No?

A real-life example
A customer was told that the furniture in question, on sale for P6, 999.95, could be purchased on a 3-month interest free credit scheme. However, the agreement that she actually signed turned out to be a 12-month, interest-bearing scheme, as follows:
The extra, hidden charges were:

Basic price	P6, 999.95
Discount	P999.95
True Price	P6, 000.00

Insurance	P3, 036.00	= 51 percent of the true price
Finance charges	P1, 998.28	= 33 percent of the true price
Other charges	P185.00	=3 percent of the true price
Total extras	P5, 219.28	= 87 percent of the true price

A statement from the supplier states that the "EFFECTIVE INTEREST RATE" is 27 percent.

Unfortunately we can't find any way of making the numbers above, come to an interest rate of exactly 27 percent. Can you?

The simple truth is that an item costing P6, 000 in fact costs this customerP11, 219.28, 87 percent more than she believed. Ironically, having paid a total of P4, 000 so far, she still owes P7, 219.28, more than the price of the item!

So what should be done?
We've been thinking a lot about how store credit schemes could be better.

Suggestion no. 1 - Don't buy on credit

Yes, it sounds simple and it's not always possible but some of schemes are designed to deceive you, get you hooked and then take huge amounts of money away from you.

Suggestion no. 2 - Don't sign anything

At least not until you've had a chance to really read the agreement, think through the implications, calculate what it's really going to cost you and, most importantly, spoken to a friend or relative and listened to their advice.

Suggestion no. 3 - Voluntary Store Credit Charter

We want stores that offer customers credit schemes to talk to us about setting up a Voluntary Store Credit Charter. We invite stores to sit down with us and help us construct a set of rules that will show us that they care about their customers and that will commit them to certain basic standards.

(b) The Public Procurement and Asset Disposal Board, whose mandate is, among others, to promote competition as the mechanism through which value for money can be achieved was also identified by 14.6 percent of respondents as providing justice to consumers.
(c) Others that have been acknowledged as providing justice to consumers, albeit by insignificant number of respondents include the Botswana Telecommunications Authority (BTA), the Botswana Bureau of Standards (BOBS) and the Bank of Botswana.
(d) Though not mentioned by a significant number of respondents, some respondents acknowledged the newly formed independent 'Consumer Watchdog' as representing the interests of consumers. The Watchdog prides itself with a number of initiatives that brought smiles to consumers of different commodities in Botswana. (http://www.bes.bw)

Are the Existing Rules, Regulations and Laws sufficient to Check Anticompetitive Practices?

An overwhelming 85 percent of the respondents said that the existing rules, regulations and laws are not sufficient to check anticompetitive practices, while 10 percent can't tell whether the regulations are sufficient to check anticompetitive practices and only five percent feel the regulations and rules sufficiently check anticompetitive practices. It, therefore, turned out to be an obvious reason why the majority of respondents (95.3 percent) felt that a comprehensive

law should be enacted to check anticompetitive practices. The objectives of that law should, among others, be to:

(a) improve economic efficiency and consumer welfare, observed 75 percent respondents;
(b) consider socio economic issues, said 10 percent of the respondents. Other objectives given by insignificant number of respondents included;
(c) Facilitating fair trade practices within the market; and
(d) Restoring investor confidence in the economy.

Coverage of the Law

87.8 percent of the respondents felt that the law must cover all types of enterprises and the remaining 12.2 percent are of the view that Small and Medium-sized Enterprises (SMEs) should be exempted from the application of the Competition Law, although some within this group are for partial exemption. For example, one of the respondents noted that practices such as concerted refusal to deal, price discrimination and bid-rigging should not be tolerated regardless of firm size.

Implementation of the Law

Any Competition Law will have to be implemented by some agency. The most common forms are where the agency is an autonomous agency or the agency is under the relevant government department or ministry. Sometimes the agency may take whatever shape the government may deem appropriate. An attempt was made to establish the respondent's views on the nature of the implementing agency. 76.7 percent of the respondents preferred an autonomous entity, while the remaining 23.3 percent preferred an agency under a government department/ministry.

Powers of the Implementing Agency

Investigation and Adjudication: A large proportion of respondents (46.3 percent) advocated to have conferred on the implementing agency, only the investigative powers, and that the adjudicative powers be left with the courts. On the other hand, 34.1 percent of the respondents were of the view that the implementing authority be vested with both investigative and adjudicative powers, while only 19.5 percent said that the implementing authority should be tasked with both investigative and adjudicative roles (refer table 2.15).

An insignificant number of respondents argued that in sectors with existing regulators (e.g. telecommunications), anticompetitive practices should initially be investigated and adjudicated upon by these regulators, and passed on to the Competition Law implementing agency only when the regulators fail to reach a resolution.

Consumer Protection: 82.2 percent of respondents said that the implementing authority should also deal with consumer protection issues. Some of the reasons given for this are that the Division of Consumer Affairs under the Department of Trade and Consumer Affairs is not well resourced to adequately deal with consumer issues. Their views may be vindicated by the emergence of a private Consumer Watchdog, whose popularity among consumers seem to be increasing very fast. On the other hand, 13.3 percent of respondents feel that the implementing agency should not be tasked with consumer protection issues. They argue, among others, that sector regulators such as the BTA and the Division of Consumer Affairs should continue to deal with the consumer protection office.

Criminalisation of Violations of Law: According to 79.1 percent of the respondents, violations of the law should be criminalised sometimes, depending on the circumstances and the weight of the violation. 16.3 percent were of the view that violations of the law should be criminalised at all times. Only 4.7 percent did not have a position as to whether violations of the law should be criminalised or not.

Exemptions: It is normal to have exemptions from the application of the Competition Law on public interest grounds. These include technological advancement, protection of SMMEs and/or socially advanced groups and even employment creation grounds. On such exemptions, 55.8 percent of the respondents were for a Competition Law with such exemptions, while 30.2 percent were against having such exemptions in the law. The remaining 14.0 percent did not have a position on the matter. Those supporting the exemptions argued, among others, that SMEs are fragile and may need some special treatment. For example, they may be allowed to co-operate in areas such as sourcing materials to exploit economies of scale, and even discuss and collaborate on their pricing policies to avoid unnecessarily squeezing each other out of the market. Clearly, the latter would be some form of collusion, but proponents of the exemption felt it would go a long way in ensuring the success of SMEs.

Exemptions, by their nature are prone to abuse. For example, SMMEs may unlawfully extend the benefits of leverages given under the law to larger

Table 2.15: Powers of the Implementing Agency (in percent)

Both investigative and adjudicative	Investigative only with adjudicative power vested with the courts	Investigative only with powers adjudicative powers vested with courts	Other: Initial investigation by sector regulators, and the implementing agency if no resolution.
34.1	19.5	46.3	Insignificant

firms. It is, therefore, important that proper mechanisms be put in place to protect exemptions from abuse. Thus, respondents were generally in support of putting in place mechanisms to protect exemptions from abuse. 55.3 percent of the sample felt that there must be well-defined regulations, which ensure that the exemptions are not abused. 36.8 percent argued that the judiciary should ensure that the exemptions are not abused. Thus, their view is that abuse of the exemption rules should be a criminal offence punishable by law. The rest of the respondents did not have a position on the matter.

Stakeholder Involvement: The key to success of democratic and civil institutions is continuous stakeholder consultation. Competition Law has a bearing on different stakeholders, including the government, businesses, civil society and consumers. It is against this background that each stakeholder must understand the functioning of the competition authority. Such understanding would help stakeholders appreciate the decisions of the competition authority. Because of this, respondents were asked to express their opinion on stakeholder involvement in the functioning of the competition authority. An overwhelming majority (90.7 percent) said that stakeholders must be involved in the functioning of the competition authority.

There is a feeling that the competition authority should involve stakeholders in a number of ways. These include structured consultative committees (cited by 74.4 percent of respondents) and occasional public hearings (20.5 percent).

Stakeholder Specific Picture

Having established the overall picture, which aimed at looking at competition issues in aggregative form, we are now going to tease out important perceptions at the stakeholder level. To recap, these stakeholders are the government, businesses, and the civil society / consumers.

Government's Perspective

This subsection (refer table 2.16) discusses the government sector's perceptions about competition issues in Botswana.

Table 2.16: Knowledge about Prevalence of Anticompetitive Practices by Government Agents

Extent of existence	*Percent*
Moderately	75.0
Significantly	18.7
Non Response	6.3

Existence of Anticompetitive Practices

75 percent of government agents were of the view that the existence of anticompetitive practices was moderate, which is in line with the overall picture of 68 percent. In addition, 18.7 percent said that the existence was significant, again in line with the overall picture of 20.8 percent.

Effect of Anticompetitive Practices on Consumers

31.3 percent of government agents felt that consumers are moderately affected by anticompetitive practices. This corresponds with the overall picture of 33.3 percent. 50.0 percent said that consumers were significantly affected by the practices, which is also not far away from the overall picture of 45.8 percent. However, at 18.7 percent, those who feel consumers are hugely affected by these practices are slightly above the overall figure of 10.4 percent (refer table 2.17).

Table 2.17: Government Agents' perceptions on Extent to which Consumers are affected by Anticompetitive Practices

Extent of impact	*Percent*
Moderately	31.3
Significantly	50.0
Hugely	18.7
Total	**100**

Most Prevalent Practices

The views of government agents continue to be in line with overall picture (refer table 2.18). Represented by 37.5 percent of the respondents, government agents rate price fixing as the most prevalent practice, which corresponds with the national average which puts price fixing as the most prevalent with 39.6 percent of the responses. The second most prevalent practice is exclusive dealing (43.8 percent), which is also in line with the overall average of 39.6 percent for the same practice. The third most prevalent practice is considered to be UTPs, which represents a diversion from the overall picture where predatory pricing holds the position.

Most Prevalent Practices by Region

Local Level

As with the overall picture, the most prevalent practice at the local level is price fixing (25.0 percent), which again is not far from (29.2 percent) for the national level. The trend follows for market sharing, which, as is the case with the overall picture takes the second spot. Others that take the second spot at the local level include bid-rigging and tied selling. The third most prevalent practice is said to be predatory pricing (18.8 percent) (refer table 2.19).

Table 2.18: The Most Prevalent Practices (Government)						
Rank	**Most prevalent Practice**	**Percent of respondents (In percent)**	**Second Most prevalent Practice**	**Percent of respondents (In percent)**	**Third Most prevalent Practice**	**Percent of respondents (In percent)**
1	Price Fixing	37.5	Exclusive Dealing	43.8	Unfair Trade practices	25.0

Table 2.19: Most Prevalent Practices at the Local Level (Government)						
Rank	**Most prevalent Practice**	**Percent of respondents**	**Second Most prevalent Practice**	**Percent of respondents**	**Third Most prevalent Practice**	**Percent of respondents**
1	Price Fixing	25.0	Market Sharing Bid rigging Tied selling	43.8 12.5 12.5 12.5	Predatory Pricing	18.8

National Level

The analysis of anticompetitive practices at the National Level reveals that the most prevalent practice is once again price fixing, identified by 25 percent of the respondents, which corresponds with the overall picture of 27.0 percent. Tied selling is also identified alongside price fixing. A further 25 percent (which is higher than the overall picture of 14.6 percent) of respondents picked bid-rigging as the second most prevalent practice at the national level.

Unfair trade practices come third (25 percent), which is also in line with overall picture of (29.2 percent) (refer table 2.20).

Sectors Most Affected by Anticompetitive Practices

Attempt was made at identifying sectors in which anticompetitive practices occur. Asking respondents which sectors they thought were mostly affected by the practices did the same (Table 2.21).

Table 2.20: Most Prevalent Practices at the National Level (Government)						
Rank	**Most prevalent Practice**	**Percent of respondents**	**Second Most prevalent Practice**	**Percent of respondents**	**Third Most prevalent Practice**	**Percent of respondents**
1	Price Fixing Tied selling	25 25	Bid Rigging	25	Unfair Trade Practices	25

Table 2.21: Most Affected Sectors (Government)						
Rank	**Most affected sector**	**Percent of respondents**	**Second Most affected sector**	**Percent of respondemts**	**Third Most affected sector**	**Percent of respondents**
1	Construction	18.8	Wholesale	18.8	Government	12.5
	Parastatal	18.8	Trade		Motor Sector	12.5
			(excluding vehicle trade)		Media	12.5

Government agents believe the prevalence of anticompetitive practices is the highest within the construction and parastatal sectors (18.8 percent). The wholesale trade sector, which is perceived to have highest prevalence of anticompetitive practices overall, is relegated to the second spot in government sector analysis. The motor retail and construction sectors, viewed as the second most affected sectors at the overall picture are placed third by government agents.

State-owned Monopolies and Anticompetitive Practices

A good 75 percent of government agents were aware of the existence of state-owned monopolies in Botswana. However, only 43.7 percent said that government monopolies engage in anticompetitive practices, which is lower than the 65.5 percent recorded on the overall picture. 12.5 percent of the respondents said they do not.

Origin of Anticompetitive Practices

According to the majority (75 percent) of government respondents, some anticompetitive practices are imported. This is slightly higher, albeit in line with the overall picture of 70 percent.

Existence of Rules and Regulations to check on Anticompetitive Practices

Asked whether there are rules and regulations to check anticompetitive practices, 43.7 percent of the respondents said they did not know, while 31.3 percent were of the view that there are no such rules and regulations. 6.3 percent alleged awareness about the rules, while the remaining lot was non-committal. This scenario mirrors the overall picture, where 48.8 percent of the respondents said that they did not know whether such regulations and laws existed and 34.9 percent were of the view that there are no such laws and regulations.

Implementation of Anticompetitive Rules

31.2 percent of the respondents said that the rules are sometimes implemented when violations of competition are committed, while 6.3 percent said the rules are always implemented. The rest did not have any opinion on the matter.

Agencies that Provide Justice to Consumers

A number of agents were identified as providing justice to the consumers. The PPADB seems popular with government agents in relation to the provision of justice to the consumers than it is at the national level. For example, 25.3 percent of the respondents picked it for the role as opposed to 14.6 percent it recorded at the national level.

The Consumer Protection Division of the Department of Trade and Consumer Affairs was the most popular with 37.5 percent of respondents picking it. 12.5 percent of the respondents picked the Botswana Telecommunications Authority (BTA). Generally, these are governmental agencies.

Are the Existing Rules, Regulations and Laws Sufficient to Check Anticompetitive Practices?

The existing rules, regulations and laws were generally viewed as not sufficient to check anticompetitive practices, as 68 percent of the respondents were doubtful about the effectiveness of the rules and regulations. 12.5 percent cannot tell whether the regulations are sufficient to check anticompetitive practices, which is in line with the overall picture of 10 percent. As a result, the majority of respondents (81.2 percent) felt that a comprehensive law should be enacted to check anticompetitive practices. According to respondents, the law should, among others, improve economic efficiency and consumer welfare (62.5 percent of respondents) and consider socio- economic issues (22.7 percent).

Coverage of the Law

50 percent of the respondents felt that the law must cover all types of enterprises, while 18.8 percent said it should not, arguing that it should exempt, among others, SMEs. The same argument was raised at overall stakeholder analysis.

Implementation of the Law

68.8 percent of government agents believe that the implementing agency should be an autonomous entity. While this is below the overall picture figure of 76.7 percent, indicating government agents' confidence in the system, it still points out to the need to have an independent implementing agency. Only 12.5 percent were of the view that the agency should be under a government department or ministry. The rest could not take a stand.

Powers of Implementing Agency

Investigation and Adjudication: 31.3 percent of the respondents (which compared unfavourably with the (46.3 percent) for the overall picture) were of the view that the implementing agency should be vested with investigative powers with the adjudicative powers left with the courts. On the other hand, 25 percent of the respondents were of the view that the implementing authority be vested with both investigative and adjudicative powers and another 25 percent were of the view that the implementing authority should be tasked with both investigative and adjudicative roles.

Consumer Protection: A significant 68.8 percent of the respondents said that the implementing authority should also deal with consumer protection issues. An insignificant number of respondents (12.5 percent) were against such an arrangement, arguing that sector specific regulatory bodies should handle such issues.

Criminalisation of violations of Law: 81.2 percent of the respondents support a situation where violations of the law are sometimes criminalised. Otherwise the rest did not have any opinion on the matter.

Exemptions: Government sector (56.3 percent) is generally for exemptions of certain industries and sectors from the ambit of the Competition Law, while 12.5 percent is against such exemptions. The figure supporting exemptions is in line with the overall picture figure of 55.8 percent. In order to prevent abuse of exemptions, the government sector suggested that such abuse should be controlled through well-defined guidelines (37.5 percent), and through judicial scrutiny (43.7 percent).

Stakeholder Involvement

A significant number (68.8 percent) of government sector respondents were of the view that the competition authority should involve stakeholders in a number of ways. These include structured consultative committees (cited by 43.8 percent of respondents) and occasional public hearings (18.8 percent).

Civil Society/Consumer's Perspective

This sub-section discusses civil society/consumers (herein referred to as consumers) sector's perceptions about competition issues in Botswana.

Existence of Anticompetitive Practices

According to 75 percent of consumers, existence of anticompetitive practices in Botswana is moderate, lower than the overall picture figure of 68.8 percent. In addition, 12.5 percent said that the existence was significant, again below the overall picture figure of 20.8 percent (refer table 2.22).

Effect of Anticompetitive Practices on Consumers

As shown in table 2.23, 50.0 percent of consumers felt that consumers are moderately affected by anticompetitive practices, which is higher than overall picture figure of 33.3 percent. 31.5 percent said the effect was significant. The figure is surprisingly lower than the overall picture figure of 45.8 percent. This may be because consumers in Botswana are generally not aware of both the benefits of competition and the dangers of lack of a competitive market. In addition, 18.7 percent of the respondents felt the impact was huge, which is slightly above the overall figure of 10.4 percent.

Table 2.22: Knowledge about Prevalence of Anticompetitive Practices (Civil Society)

Extent of	*Percent existence*
Moderately	75.0
Significantly	12.5
Hugely	12.5

Most Prevalent Practices

Represented by 43.7 percent of the respondents, consumers rate price fixing as the most prevalent that corresponds with the overall picture, which also views price fixing as the most prevalent with 39.6 percent of the responses. The second most prevalent practice is exclusive dealing (31.5 percent), which is slightly below the overall average of 39.6 percent and the government figure of (43.8 percent) for the same practice. The third most prevalent practice is considered to be UTPs (18.8), which represents a diversion from the overall picture whether the position goes to predatory pricing (refer table 2.24)

Table 2.23: Extent to which Consumers are Affected by Anticompetitive Practices (Consumers)

Extent of impact	*Percent*
Moderately	50.0
Significantly	31.5
Hugely	18.7
Total	**100**

Most Prevalent Practices by Region

Local Level (refer table 2.25)

As with the overall picture, the most prevalent practice at the local level is price fixing (31.3 percent). However, whereas the second most prevalent practice under the overall picture is market sharing, for consumers, the

Table 2.24: Most Prevalent Practices (Consumers)

Rank	Most prevalent Practice	Percent of respondents	Second Most prevalent Practice	Percent of respondents	Third Most prevalent Practice	Percent of respondents
1	Price Fixing	43.8	Exclusive Dealing	31.5	Unfair Trade Practices	18.8

Table 2.25: Most Prevalent Practices at the Local Level (Consumers)						
Rank	**Most prevalent Practice**	**Percent of respondents**	**Second Most prevalent Practice**	**Percent of respondents**	**Third Most prevalent Practice**	**Percent of respondents**
1	Price Fixing	31.3	Bid Rigging	18.8	Unfair Trade Practices	25.5

Table 2.26: Most Prevalent Practices at the National Level (Consumers)						
Rank	**Most prevalent Practice**	**Percent of respondents**	**Second Most prevalent Practice**	**Percent of respondents**	**Third Most prevalent Practice**	**Percent of respondents**
1	Price Fixing	31.5	Bid Rigging	25	Unfair Trade Practices	31.5

second spot is taken by bidrigging, which is somewhat abnormal, as in most cases one would not expect consumers to keep track of bid activities. 25 percent of consumers felt the third most prevalent practice is unfair business practices. This is in line with the overall picture, where unfair business practices were also considered third.

National Level (refer table 2.26)
At the National Level, the most prevalent practice is price fixing, identified by 31.5 percent of the respondents, which corresponds with the overall picture, although the latter has lower percentage points of 27. Bid-rigging takes the second spot (25 percent), as is with the overall picture, while unfair trade practices goes third, again as is the case with the overall picture. Thus, price fixing comes out as the most prevalent practice at both the national and local levels, which makes an obvious contender for the overall first spot.

Sectors Most Affected by Anticompetitive Practices (refer table 2.27)

Consumers' view is that the prevalence of anticompetitive practices is the highest within the construction sector (25 percent). The wholesale trade sector, which is perceived to have highest overall prevalence of anticompetitive practices is in the overall picture, like with government, is relegated to the second spot (18.8). The financial sector (banking) and commercial agriculture sectors are placed third (12.5 percent).

State-owned Monopolies and Anticompetitive Practices

81.3 percent of consumers are aware of the existence of state-owned monopolies in Botswana; this is slightly higher than then overall picture of 77.8 percent. A further 62.5 percent of consumers reported knowledge of cases when government monopolies have engaged in anticompetitive practices. This is slightly lower than the 65.5 percent recorded on the overall picture.

Table 2.27: Most Affected Sectors (Consumers)						
Rank	**Most affected sector**	**Percent of respondents**	**Second Most affected sector**	**Percent of respondents**	**Third Most affected sector**	**Percent of respondents**
1	Construction	25	Wholesale Trade (excluding vehicle Trade)	18.8	Financial sector (Banking) commercial agric	12.5 12.5

The Origin of Anticompetitive Practices

68.8 practices of consumers allege that some anticompetitive practices originate from outside Botswana. This is slightly lower than the overall picture of 70 percent.

Existence of Rules and Regulations to check on Anticompetitive Practices

31.3 percent of consumers noted that there were no rules and regulations meant to check anticompetitive practices. This is in line with overall picture of 34.9 percent. Another 43.7 percent said that they did not know whether such regulations and laws existed or not. The figure is in line with the overall figure of 48.8 percent. Only 6.3 percent of the consumers noted that there were rules and regulations meant to check anticompetitive practices. This picture is not at all surprising, given that consumers in Botswana have relatively been newly exposed to issues of competition in Botswana.

There is also a general view within consumers that when rules are violated, sometimes action is taken to redress the situation. This view is shared by 50 percent of consumers.

Agencies Provide Justice to Consumers

Consumers identified a few organisations that provide justice to the consumers. These include, the PPADB, identified by 18.8 percent of respondents, which is slightly higher than the overall figure of 14.6 percent.

56.3 percent of the consumers identified the Consumer Protection Division of the Department of Trade and Consumer Affairs. Other agencies received just 6.3 percent of the votes.

Are Existing Rules, Regulations and Laws Sufficient to Check Anticompetitive Practices?

The existing rules, regulations and laws were generally viewed as not sufficient to check anticompetitive practices, as 68.8 percent of the respondents were doubtful about the effectiveness of the rules and regulations. This is lower than the overall picture figure of 85.0 percent, but still high. 12.5 percent cannot tell whether the regulations are sufficient to check anticompetitive practices, which is in line with the overall picture of 10 percent. Thus, the majority of respondents (75 percent) felt that a comprehensive law should be enacted to check anticompetitive practices. According to respondents, the law should focus on, among others, improving economic efficiency and consumer welfare and also consider socio-economic issues.

Coverage of the Law

As for coverage of such a law, 50 percent of the respondents felt that the law must cover all types of enterprises and, while 25 percent were of the view that it should not, arguing that it should exempt, among others SMEs. The same argument was raised at overall stakeholder and government analysis.

Implementation of the Law

As to who should implement the law, 62.5 percent of consumers felt that it is best when the implementing agency is an autonomous entity. 25 percent, which represents a slight increase from the 23.3 percent observed at the overall level were of the view that the agency should be under a government department or ministry.

Powers of the Implementing Agency

Investigation and Adjudication: A quarter (25 percent) of the respondents were of the view that the implementing agency should be vested with investigative powers with the adjudicative powers left with the courts. 12.5 percent felt that the implementing authority be vested with both investigative and adjudicative powers and a 50 percent were of the view that the implementing authority should be tasked with both investigative and adjudicative roles, which indicates the substantial confidence consumers put in the independence of the implementing agency.

Consumer Protection: 75.0 percent of respondents said that the implementing authority should also deal with consumer protection issues, while another 12.5 percent were against such an arrangement, primarily because their preference is to have consumer protection issues handled by sector specific regulatory bodies.

Criminalisation of Violations of Law: On the criminalisation of violations of such a law, 56.3 percent of the consumers prefer that violations of the law be sometimes criminalised. 31.3 percent were of the view that violations should be criminalised at all times.

Exemptions: The majority (81.3 percent) of consumers prefer to have a law with exemptions, including exemptions of SMMEs. This figure is way above the overall picture figure of 55.8 percent, suggesting that on average, consumers prefer exemptions than other stakeholders. In order to prevent abuse of exemptions, 50 percent of consumers suggested that such abuse should be controlled through well-defined guidelines and 31.3 percent suggested the use of judicial system.

Stakeholder Involvement: The involvement of stakeholders is well supported by consumers. For example, 75 percent said that the competition authority should involve itself through occasional public hearings and 12.5 percent said that theauthority should do so through structured consultative committees.

Business Perspective

Existence of Anticompetitive practices

56.2 percent of business perceives the existence of anticompetitive practices as moderate, which is lower than the overall picture of 68 percent, the government's view of 75 percent, and the consumers' view of 75 percent. However, it is interesting to find that while 20.8 percent, 18.7 percent, and 13.3 percent of the respondents on the overall picture, government sector and civil society respectively rated the existence of anticompetitive practices as significant, a higher proportion of business (31.3 percent) rate the problem as significant This is not surprising, given that business is essentially the perpetrator of anticompetitive practices, and is in a better position to know about the problem than other stakeholders (refer table 2.28).

Table 2.28: Knowledge about Prevalence of Anticompetitive Practices in the Business Community

Extent of existence	*Percent*
Moderately	56.2
Significantly	31.3
Hugely	12.5

Effect of Anticompetitive Practices on Consumers

As depicted in Table 2.29, 18.8 percent of business felt that consumers are moderately affected by anticompetitive practices. This is much lower than the overall picture of 33.3 percent, government (31.3 percent) and consumers (50.0 percent). Furthermore, only 12.5 percent of business said consumers were significantly affected by anticompetitive practices.

Table 2.29: Extent to which Consumers are Affected by Anticompetitive Practices (Business)

Extent of impact	*Percent*
Moderately	18.8
Significantly	12.5
Hugely	0
Total	**100**

This is again much lower than the corresponding overall figure of 45.8 percent, government's figure of 50 percent, and consumers' figure of 31.5 percent.

This is expected, since business is normally the perpetrator of anticompetitive practices, it is less likely to care about consumer welfare than other stakeholders. This calls on business to balance their business interests with consumer welfare, failing which the law should ensure that business does not make profits at the expense of consumer welfare.

Most Prevalent Practices

Whereas all other stakeholders have price fixing as the most prevalent anticompetitive practice, business has a divergent view. Instead, they have resale price maintenance as their most prevalent practice (refer table 2.30). Business is essentially saying that they do not fix prices, although they admit to a somewhat lesser offence of dictating the resale price to the retailer. This may be seen as a lesser offence in that unless the manufacturers have agreed to fix the resale price, at least it may still give consumers option on the retail price. Like government, the overall picture and consumers, the second most prevalent practice is exclusive dealing. The third most prevalent practice is predatory pricing, which has short-term benefit to the consumer but long-term consumer misery.

Most Prevalent Practices by Region

Local Level (refer table 2.31)

As with the overall picture, government and consumers, the most prevalent practice at the local level is price fixing (31.5 percent). Unfair business practices take second spot, replacing market sharing in the case of the overall picture and relegating it to the third spot (18.8 percent).

National Level (refer table 2.32)

However, at the national level, the most prevalent practice is bid-rigging, identified by 44.0 percent of the respondents, a diversion from the overall picture, the local level, government and consumers' perspective, where price fixing takes the lead. Exclusive dealing is the second most prevalent practice at the national level. Predatory pricing, identified by 31.5 percent of businesses is the third most prevalent practice. This may indicate increased business concern with the practice, more so that business as a key stakeholder in the bids 'insides–outs' is better placed to provide a better picture about bids.

Table 2.30: Most Prevalent Practices (Business)

Rank	Most prevalent Practice	Percent of respondents (in percent)	Second Most prevalent Practice	Percent of respondents (in percent)	Third Most prevalent Practice	Percent of respondents (in percent)
1	Resale price maintenance	43.7	Eclusive Dealing	50	Preadatory pricing	18.8

Table 2.31: Most Prevalent Practices at the Local Level (Business)						
Rank	**Most prevalent Practice**	**Percent of respondents (in percent)**	**Second Most prevalent Practice**	**Percent of respondents (in percent)**	**Third Most prevalent Practice**	**Percent of respondents (in percent)**
1	Price fixing	31.5	UTPs	18.8	Market Sharing	18.8

Sectors most Affected by Anticompetitive Practices *(refer table 2.33)*

Attempt was made at identifying sectors in which anticompetitive practices occur. Asking respondents which sectors they thought were mostly affected by the practices achieved this.

Business believes the prevalence of anticompetitive practices is the highest within the Wholesale and Retail Sector (43.7 percent), as is the case with the overall picture. The Motor Trade Sector has the second highest (25 percent) followed by Construction.

State-owned Monopolies and Anticompetitive Practices

Business is aware of state-owned monopolies in Botswana. A sizeable 62.5 percent (slightly lower than the overall picture of 65.5 percent) of businesses were aware of the existence of state-owned monopolies in Botswana, and all were of the opinion that state monopolies engage in anticompetitive practices.

Origin of Anticompetitive Practices

75 percent of business believes that some anticompetitive practices originate from outside the country. This is slightly higher than the overall picture of 70 percent.

Existence of Rules and Regulations to check on Anticompetitive Practices

The majority of businesses (43.7 percent) cannot tell whether there are rules and regulations to check anticompetitive practices, which is slightly lower than the overall picture figure of 48.8 percent. 31.3 percent were of the view that there are no such rules and regulations, and 25 percent said that the rules existed. These include the PPADB regulations, district council tendering processes, the BTA regulations etc.

Violations of Anticompetitive Rules

As to whether action is normally taken in case the rules are violated, 25 percent of the respondents said that the rules are sometimes implemented, while 31.3 percent said that the rules are always implemented.

Agencies that Provide Justice to Consumers

The Consumer Protection Division of the Department of Trade and Consumer Affairs was singled out as the agency that provides justice to consumers by 38.0 percent of businesses.

Are the Existing Rules, Regulations and Laws Sufficient to check Anticompetitive Practices?

The existing rules, regulations and laws were generally viewed as not sufficient to check

Table 2.32: Most Prevalent Practices at the National Level (Business)						
Rank	**Most prevalent Practice**	**Percent of respondents (in percent)**	**Second Most prevalent Practice**	**Percent of respondents (in percent)**	**Third Most prevalent Practice**	**Percent of respondents (in percent)**
1	Bid-rigging	44.0	Exclusive Dealing	31.5	Predatory pricing	31.5

Table 2.33: Most Affected Sectors (Business)						
Rank	**Most affected sector**	**Percent of respondents**	**Second Most affected sector**	**Percent of respondents**	**Third Most affected sector**	**Percent of respondents**
1	Wholesale and retail sector	43.7	Motor retail sector	25	Construction	25

anticompetitive practices, as 69 percent of the respondents did not have confidence in the effectiveness of the rules and regulations. Thus, the majority of respondents (87.5 percent) felt that a comprehensive law should be enacted to check anticompetitive practices. They felt that the law should, among others, improve economic efficiency and consumer welfare.

Coverage of the Law

75 percent of the respondents felt that the law must cover all types of enterprises. This represents a departure from other stakeholders' well-pronounced support for a law that exempts SMMEs.

Implementation of the Law

As is the trend with all other stakeholders, the majority of businesses (75 percent) are of the opinion that the implementing agency should be an autonomous entity. Only 25 percent said that the agency should be under a government department or ministry.

Powers of Implementing Agency

Investigation and Adjudication: 43.8 percent of respondents, which is a slight drop from the 46.3 percent for the overall picture, were of the view that the implementing agency should be vested with investigative powers with the adjudicative powers left with the courts. On the other hand, 31.3 percent of the respondents were of the view that the implementing authority be vested with both investigative and adjudicative powers left any other authority, while 31.3 percent were of the view that the implementing authority should be tasked with both investigative and adjudicative roles.

Consumer Protection: An overwhelming 87.5 percent of respondents said that the implementing authority should also deal with consumer protection issues. This is in line with other stakeholders' views. Only 12.5 percent of businesses were against such an arrangement. Their view is that sector specific regulators should handle such issues.

Criminalisation of Violations of Law: 75 percent of the respondents support a situation where violations of the law are sometimes criminalised, while 12.5 percent were of the opinion that criminalisation should be at all times.

Exemptions: Only 12.5 percent of business respondents argued that the law should provide for exemptions. This is in contrast with the overall view, where 55.8 percent of respondents supported exemptions. However, the business sector suggested that in order to prevent abuse of exemptions, government must put in place well-defined guidelines (43.8 percent) and through judicial scrutiny (12.5 percent).

Stakeholder Involvement: 100 percent of businesses were of the view that the competition authority should involve stakeholders in its functioning, especially advocacy. Like with other stakeholders, suggested ways include structured consultative committees and occasional public hearings (18.8 percent).

National Competition Policy

Introduction

Botswana's National Competition Policy was adopted in August 2005. The decision by the Government to formulate the Competition Policy came out of, among others, governmental concerns about the likelihood of private anticompetitive practices emerging thus undermining the government's reform objectives. The Competition Policy aims to provide a coherent framework that integrates privatisation, deregulation, and liberalisation of trade and investment into a strategy for promoting a dynamic market-led economy.

The Competition Policy, therefore, is a strategy for enhancing Botswana's ability to promote free entry into the market place by investors and all firms, irrespective of their size; attraction of both domestic and foreign investment inflows, innovation and transfer of technology from intellectual property rights-holders, unfettered competition, acceptable business behaviour and conduct, fair business practices, efficiency, competitiveness, and consumer welfare.

Main Objectives of Competition Policy

The main objectives of the Competition Policy are to:

- enhance economic efficiency, promote consumer welfare and support economic growth and diversification objectives;
- prevent and redress anticompetitive practices in the Botswana economy and remove unnecessary constraints on the free play of competition in the market;
- prevent and redress unfair practices adopted by firms against consumers and small businesses in Botswana;
- complement other government policies and laws;
- enhance the attractiveness of the Botswana economy for foreign direct investment by providing a transparent, predictable and internationally acceptable regulatory mechanism for firms in pursuit of the overall efficiency and competitiveness of the economy;
- support other policy initiatives such as citizen's economic empowerment and access to essential services without prejudice to the pursuit of the overall efficiency and competitiveness of the economy; and

- achieve deregulation where regulation is no longer needed.

In essence, the main objectives of the Competition Policy are to maintain andpromote competition in order to achieve efficient use of resources, protect thefreedom of economic action of firms and, as the ultimate goal, promote consumer welfare.

Strategic Policy Considerations

The government recognises that there are certain strategic considerations critical for the success of the Competition Policy. These are:

(a) Establishment of the Competition Authority:

- The authority will be established to implement the Competition Policy and its related legislation.

(b) Development of the Competition Act

- In order to ensure that Competition Policy is properly implemented, the Government will formulate a Competition Act, through which, competition in the market place will be regulated.

(c) Ensuring Consistency of the Competition Policy with Other Government Policies:

- In order to support the Government's other ongoing efforts to create and maintain a more conducive environment for stimulating and enabling the growth and diversification of the economy, the Competition Policy will be consistent with other policies such as the Policy on SMEs, Industrial Development Policy, and the Privatisation Policy.
- The Government will maintain a non-interference and competitive environment whilst ensuring consistency between this policy and other socio-economic development policy initiatives.
- The Government will work in collaboration and harmony with other countries and organisations at the bilateral and multi-lateral levels to respond to existing and potential cross-border anticompetitive practices, including but not restricted to, various types of anticompetitive behaviour, abuse of dominant position in the market, and various types of anticompetitive combinations.
- The principles of competition should be embedded in the process of policy-making, legislation and enforcement, and applied at both local and central government levels.

(d) Development of Public Awareness and Support for Competition Enforcement:

- Implementation of Competition Policy will be accompanied by the development and implementation of a strategy for educating the public and other stakeholders on the relevance and necessity of the Policy to the nation.

(e) Interface between the Competition Authority with other Sector Specific Regulatory Bodies

- The government recognises the important role and advantages of having sector regulators such as the Bank of Botswana (BoB) and the Botswana Telecom Authority (BTA). However, all these will fall under the ambit of the Competition Law.
- There will be harmonisation of all legislation related to the Competition Policy in order to ensure consistency between them.
- In sectors characterised by economic/commercial activities, complex science, engineering and technology or having natural monopoly or other special elements, the competition authority and aector apecific regulators will collaborate and compliment each other.

(f) Structural Reforms of Public Monopolies

- The development of the Competition Policy does not in any way compromise the Government's commitment to restructuring public enterprises within the framework for increasing the role of the private sector in the economy. The Government's sector reform programme will, therefore, continue alongside the implementation of the Competition Policy.
- The Government, will however, retain monopoly powers, where necessary, to provide major infrastructure facilities whilst at the same time opening up activities like connection and distribution services to competition.

Comment: Notwithstanding the qualification 'where necessary' this seems to contradict government pronouncement and subsequent initiatives on the Public Private Partnerships (PPPs) arrangement, through which the private sector can compete to provide such facilities through a PPP arrangement. Under the PPP arrangement, Government would let the private sector, through a competitive bid provide the infrastructure, and the government pays the private party some monthly payment.

This would help in a number of ways. (a) It would open competition within the infrastructure service sector. (b) It would reduce government's development expenditure; thereby release funds for other purposes. (c) It would transfer, among others, construction risk from government to the private sector, as the Government will only pay for the service rendered by the project at completion stage. As it stands now, government carries the risk of maintaining not a well-designed and structurally faulty infrastructure, which would change under a PPP arrangement.

- In line with the Privatisation Policy and the Competition Policy, the government will, prior to introducing competition in a market traditionally supplied by public enterprise or

monopoly, undertake a review of the entity or entities concerned to determine the appropriateness of introducing competition.

(g) Mergers & Acquisitions

- In order to safeguard competition in the market place, government will, if and when necessary, review mergers and acquisitions (M&As), including joint ventures and other forms of business alliances. This will ensure that they do not compromise competition within the market.

(h) Professional Services

- All professional associations will be put under the ambit of the Competition Policy. This is meant to ensure that their activities and laws controlling them do not inhibit competition within the market.

(i) Consumer Protection

- The Competition Policy and its related legislation will protect consumers from any deceptive and fraudulent behaviour by sellers. Thus, the formulation of the Competition Act will take into account the provisions of the Consumer Protection Act.

Comment: This is a welcome development, as is in line with survey results.

(j) Small-scale Firms

- The Policy seeks to promote the efficiency and competitiveness of small-scale firms, which form a large proportion of the industrial base in Botswana. In this regard, small-scale firms will be included within the ambit of the Competition Policy in order to challenge and encourage them to think and act strategically in building and sharpening their competitive edge.

Comment: Apart from the business sector, the government and consumer sectors have advocated for exemption of SMMEs. The policy does not provide such exemptions. It is, therefore, important that before the Law is developed, there be public debate on the merits and demerits of exempting SMMEs, so that the public has a clear understanding of why the SMMEs were not exempted. In addition, the Policy on SMMEs in Botswana state identifies "Excessive Government Laws and Regulations" as one of the problems and constraints facing SMMEs. Care should be taken that the Competition Policy does not come as yet another layer of regulation that has so many years burdened the SMMEs.

(k) Exclusions and Exemptions

There will be exemptions in the policy. These will take into account the following:

- the economic activity's strategic importance and national interest to the country;
- the extent to which social benefits gained from exclusions outweigh the costs;
- the extent to which efficiency and external competitiveness will be enhanced as a result of exclusions and exemptions;
- convincing proof or evidence that a sector's regulatory body acting within its powers expressly approves the firm or the organisation's action in question; and
- convincing proof or evidence that the application and/or related legislation is displaced by sector-specific regulatory regimes or other manifestations of state ownership or directive.

Taking these into consideration, the policy will exempt and exclude the following:

(L) Public Utilities

Infrastructural public utilities such as landline telecommunications, water and electricity require huge capital outlays, which take long to recoup given the paucity of Botswana's population. Since this situation may constrain private sector investment in these sub-sectors, the Government may exclude and exempt the provision of some of the infrastructural facilities from this policy. But public utility connections and distribution may be put under the ambit of the Competition Policy.

Comment: As long as government is prepared to pay the private sector to 'compete' through a tendering process to provide the infrastructure, there is no reason why the government has to exempt infrastructural projects. For example, at the moment, the government undertakes rural electrification and rural telecommunications through engaging 'commercially run' government entities. The same concept can be used with private companies, where a private company is asked to provide a service even when it is not commercially viable, and government pays the private company market rates for the service.

(M) Collective Bargaining

In order to prevent employers from exploiting workers under the pretext of free competition, the government will exempt and exclude collective bargaining by unionised workers from the ambit of this policy.

Comment: It is not clear how this will work. First, labour laws safeguard the existence of unions in the work place. Second, there is normally only one union at the work place. Thus, no one can expect any form of competition between unions at the work place. Third, business is not competing with its employees.

(N) Intellectual Property Rights

The Competition Policy recognises the important role of Intellectual Property Rights (IPRs) in Botswana. Thus, as a way of protecting IPRs from infringement

and in order to promote the development of creations and innovations, IPRs will be exempted and excluded from the ambit of this policy.

Regulatory and Institutional Framework

The effective implementation of the Competition Policy will require the establishment of a sound institutional infrastructure. While the MTI will have the overall responsibility of formulation and monitoring of the Competition Policy, a Competition Authority will be established to implement the Policy and enforce the Competition Act.

Thus, the Competition Authority will be independent from government and will have the powers to:

i. conduct investigations into claims of anticompetitive behaviour and determine whether there has been an infringement of thelaw. The powers of investigation are a key requirement for deterring anticompetitive behaviour, as these powers will enable the authority to obtain the information it needs in the process of applying the Competition Law.
ii. prosecute transgressions of the Competition Act.
iii. preside over disputes.

Parties aggrieved by the decision of the Competition Authority will have the right to appeal to the high court.

Comment: This is a welcome provision. It is also in line with views and aspirations of stakeholders.

Interface between Competition and Economic Regulation

Botswana has only one regulator, although some are likely to be established in the future, following the recent completion of an infrastructure study by the Public Enterprises Evaluation and Privatisation Agency (PEEPA), which have been recommended as such. The existing regulator is the BTA, which regulates the telecommunication service providers. Hence the question of how the regulators will relate and work with the envisaged Competition Commission is an important one. The question, however, should not be viewed as a major concern because the Competition Policy recognises the important role and advantages of having sector regulators. The policy therefore ensures the continued existence and functioning of the regulators such as the BTA, but places them under the ambit of the Competition Law. The policy notes that:

- There will be harmonisation of all legislation related to the Competition Policy in order to ensure consistency between them.
- In sectors characterised by economic/commercial activities, complex science, engineering and technology or having natural monopoly or other special elements, the competition authority and sector specific regulators will collaborate and compliment each other.

It is expected that the details of the interface between the competition authority and the independent regulators be spelt out in the Competition Law, which are yet to be developed.

Regional Integration

Not much has been done at the regional level in terms of fostering regional competition through mechanisms such as the competition policy. For example, there is no SADC Competition Policy or SACU Competition Policy, the two regional blocks to which Botswana belongs. However, the importance of the competition policy is well recognised and there seems to be light at the end of the tunnel as far as a regional competition policy framework is concerned. The new SACU requires that members have a competition policy (Article 40). It states, "member states shall co-operate with each other with respect to the enforcement of competition laws and regulations. Article 41 also states that "the Council shall develop policies and instruments to address UTPs between Member States". As for SADC, a number of SADC countries including Malawi, South Africa, Zambia, Namibia, Tanzania, and Zimbabwe have competition legislation and Botswana has a competition policy and the legislation is being drafted. This shows that there is an increasing interest in competition issues within the SADC region, although a lot still has to be done. SADC as a regional body also recognises the importance of a regional Competition Policy, but is yet to develop one. Article 25 of the SADC Trade Protocol states that "Member States shall implement measures within the Community that prohibit unfair business practices and promote competition".

As a result, the Competition Policy commits the government to working in collaboration and harmony with other countries and organisations at the bilateral and multilateral levels to respond to existing and potential cross-border anticompetitive practices, including but not restricted to, various types of anticompetitive behaviours, abuse of dominant position in the market, and various types of anticompetitive combinations.

Conclusion

Botswana Parliament passed the country's Competition Policy in August 2005. The Competition Law is still to be developed. The country's Competition Policy's main objective is to promote competition in order to achieve efficient use of resources, protect the freedom of economic action of firms and, as the ultimate goal, promote consumer welfare.

It is against this background that the study has attempted to capture the competition concerns in Botswana. The following conclusions can, therefore, suffice:

(a) There remain some policies that, while developed for a just cause, may be seen to be anticompetitive. These include the reservation policy and the policy on protection of infant industries.

(b) However, there are policies that may be termed pro-competition. These include WTO Agreement, which has opened a number of sectors for international competition. These include
- Business Services;
- Professional services;
- Computer-related services;
- Research and Development services;
- Real estate services; and
- Tourism and Related services: hotel and restaurant catering, travel agencies, and tour operators.

(c) There are laws that contain clauses that may be seen to be anticompetitive. These include:
(i) The Industrial Development Act
(ii) The Trade and Liquor Act
(iii) Botswana Meat Commission Act

(d) There are other laws that seem very pro-competition. These include;
(i) The Telecommunications Act
(ii) The Public Procurement and Asset Disposal Act

(e) There are indications of high levels of concentration in the long distance Transport Sector (CR3 of 65.7 percent in 2000) followed by Hotels and Restaurants (CR3 of 64.8 percent) and Agriculture (CR3 of 63.6 percent). The Manufacturing and Finance sectors had concentration ratios between 50 and 55 percent. The least concentrated industries, and probably the most competitive industries, were Wholesale and Retail Trade (26.8 percent) and Construction (40 percent).

(f) There is evidence of the existence of anticompetitive practices in Botswana, and the most prevalent practice is price fixing. Other notable practices are bid-rigging, unfair trade practices and market sharing.

(g) Sectors with high prevalence of such practices include the retail sector, the Motor Retail Sector, and the Construction Sector.

(h) In line with the Competition Policy, an independent authority should implement the Competition Law.

(i) While the development of Competition Policy is welcome, there seem no compelling reasons to exempt infrastructure at the expense of SMMEs.

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Chapter 3

Competition Scenario in Ethiopia

Introduction

From the historical inception of Adam Smith's modern economic theory, free competition is a fundamental principle in any market economy and has been seen as one of the foundations for democratic societies. Smith and other writers such as Alfred Marshal emphasised the benefit of the entry and exit to and from the market. The dynamic nature of competition bolsters the existence of a relatively easy procedure for new and more efficient firms to enter or leave the market.

Modern economics has also rediscovered the idea that competition is not always perfect. (Lucian Cernat and Peter Holmes, United Nation Conference on Trade and Development in 2004/1). In most developing countries, the conditions for perfect competition are far from being met and the possible benefit of competition does not necessarily always translate into additional growth. Efforts to deregulate markets that are intended to benefit consumers don't always achieve the desirable objectives. For instance, from the empirical evidence of developing countries' experience, consumer welfare and development benefits resulting from trade and investment liberalisation and privatisation, in the absence of appropriate competition rules and supporting institutional infrastructure, has been questioned.

Many developing countries, during the past two decades, tried to formulate a competition law, in the political economic environment, which relied heavily on the markets and less on government interventions. The removal of import restrictions, the reduction of subsidies, the privatisation of public owned (government) business enterprises as well as utilities, the easing of foreign exchange controls and the encouragement of FDI were planned to benefit citizens and enhance their position in the market place.

It has now been realised through experience gathered from various parts of the world that potential benefits of a shift towards a market-oriented economy will not be realised unless business firms are prevented or protected from imposing restrictions on competition. Deregulation of previously regulated sectors, including state-controlled monopolies such as utilities for a long time considered for the most part 'natural monopolies', need to be subject to review by the competition authority to ensure that these firms do not abuse their dominant position in the market.

Purpose of the Study

The purpose of this research is to survey and address the problems that consumers face due to the present state of the competition regime in the country, and recommend ways to better the situation through participatory process of engaging multiple stakeholders performing specific roles to make competition effective.

Objective and Methodology

The major objective of this Report is to come up with the findings that would help the Ethiopian Government towards effective implementation of competition legislation in the country

Research Methodology

Working on the issue of competition draws on a variety of methods and techniques that involve political, economic and social interactions, particularly between the three major actors - government, producers and consumers. The research is based on competition approach in the context of economic theory. The rise of demand for competition policy and law for producers and consumers is becoming one of the essential concerns of the 21st century. Based on this, the proposed plan of the researchers was to register the perception of the above-mentioned stakeholder groups towards benefit from a functional competition regime in Ethiopia. The information was collected from six national regional states and two chartered cities, namely Addis Ababa and Diredawa. In addition, the research also comprised analysis of various government policies to assess the extent to which those policies affected (positively or negatively) competition in the marketplace.

The information collected for the purpose of the study was based on literature reviews, field survey and

informal interactions with various key personalities both within the country and outside.

Literature Review

For background discussion and theoretical explanation, the researchers relied on secondary data. Variety of books, published and/or unpublished government documents, websites, reports and newsletters were reviewed to make the study fruitful.

Fieldwork

200 questionnaires were distributed in six national regional states towns (Adama, Awassa, Gambela, Gondar, Harar and Mekele; and two chartered cities namely, Addis Ababa and Diredawa) in Ethiopia to make the research nationwide. The output of the survey is discussed in this Report.

Interviews

Although, the researchers launched their interview and discussion regarding competition policy and law informally, the theme was to acquire sufficient data about the problems consumers faced, due to the slow progress of the investigation commission (Trade Practice Investigation Commission, Ethiopia) towards implementation of the competition legislation in the country.

Country Profile

Ethiopia is an ancient polity with a long independent history. As archaeological findings attest, it is the cradle of human civilisation. The country has a long history, with a mosaic of people and diverse cultures. The descendants of King Solomon and Queen Sheba founded the empire of Ethiopia. The country is land–locked, located in the Horn of Africa and of paradoxical situations. While rich in natural, material, and human resources, Ethiopia is also is known as the motherland of drought and famine, since time immemorial.

Ethiopia's Geographical Location

Ethiopia is situated between 3° 14' N Latitude and 33° 48' E Longitude in the Horn of Africa and shares its borders with: Eritrea, Djibouti, Kenya, Somalia, and Sudan. A prominent feature of the country is its rugged topography, comprising alpine mountains, flat-topped tablelands, deep canyons, and rolling plains. Even though, Ethiopia is twice the size of France with an area of 1.13 million square kilometers only half of it is potentially arable, including over three million hectares of potentially irrigable land.

Despite Ethiopia's location within 15^0 of the Equator, the Ethiopian highlands, inhabited by the majority of the population, enjoy temperate climate with sufficient rainfall to grow at least one crop a year. The sparsely populated lowlands of the east, southeast and northwest, on the other hand, typically have sub-tropical and tropical climates with rainfalls ranging from less than 200 to 800 mm. Despite an adequate average national rainfall of about 930mm, Ethiopia has been facing frequent droughts.

Population

Ethiopia is the second populous nation in Africa, next to Nigeria. The January 2006 Ministry of Finance and Economic Development (MoFED) status report on the Brussels Programme of Action (BPoA) for the Least Developed Countries (LDCs) figured out the population size to be 74.2 million (World Fact Book, 2006) out of which the total urban population size was estimated to be 11.97 million, while the total rural population size was 62.24 million. The size of the population has been increasing at an alarming rate with the annual population growth rate of 2.75 percent (CSA, 2004:20; MoFED, 2006:1).According to a research survey launched by MoFED in October 2005, more than two million people are added to the country's population every year.

Gross Domestic Product (GDP)

In 2004, the Central Statistics Authority (CSA) estimated the country's GDP at 50.74 million. The growth rate of gross domestic product has been seen to hover around five percent (MoFED, 2006:1). The GDP per capita income is estimated at ETB817.8 (US$89.12). The Government revenue from domestic and abroad is estimated to be ETB17.19mn (US$1.87mn), while the expenditure of the government for capital goods and others is estimated to be ETB 20.10mn (US$2.19mn) during the budget year 2003/04 that recorded a deficit of ETB2.90mn (US$0.31mn) *(ibid)*.

(Ethiopian Birr; 1US$=8.8 ETB)

Literacy Rate

The survey of the second round of the CSA of April 2004 advocated about educational attainments underlining that 58.5 percent is illiterate people out of which 66.2 percent is male and 33.8 percent is female. The same survey estimated the ratio of literacy at 41.5 percent (MoFED, 2005:82).

Unemployment Rate

According to the CSA survey of April 2004, the employment ratio of urban population was estimated at 2,854,321 (42.6 percent) of the total population; of which1 625,558 (56.9 percent) were male and 1,228,763 (43.1 percent) female.

Analysis of Socio-Politico-Economic History

From the economic perspective, the country has reasonably good resources for potential development with the availability of agricultural land, bio-diversity, water resources, minerals and so forth. Agricultural

sector constitutes the largest economic activity of the country.

More than 85 percent of the total population is engaged in agricultural work and depends on this sector for survival with about 90 percent of them living below the poverty level (Alemayehu and Befekadu, 2002:2, MoFED, 2005:4), and practicing subsistence agriculture. Agriculture contributes 40.1 percent to the country's GDP and 60 percent to its export.

The services sector stood second in economic importance to agriculture and this makes the share of industry to GDP only 12.7 percent (World Book Fact, 2006, Rahel Kassahun, 2003:1, CSA, 2004: 140). Due to various reasons, both agriculture and industrial sectors depend on the external environment, which means that both require imported inputs like fertilisers and pesticide chemicals for the agricultural sector and raw materials and spare parts for the industrial sector that exacerbate the scarcity of foreign exchange in the country. Researchers like Alemayehu and Befekadu (2002) categorised the Ethiopian economic policy regime into *three distinctive periods.*

Pre-Dergue Regime

The political economy of this period was dominated by feudalism. The political culture of the country was fractured, its society was fragmented, and the economy was severely dependent on agriculture. Service and industry were at infancy level. A little before the collapse of the ruling power, the regime strived for the emerging of market led economy in Ethiopia.

The Dergue Regime

The period was a radical departure in ideology to change the feudal economic perspectives into socialist, command economy. The emerging socialist economic policy began to bitterly bite the promising effort of the industry sector. The economic policy of the Dergue regime hampered the development of private sector that forced the economy to retard at 2.3 percent with negative per capita growth.

The colonial legacy and the cold war influence contributed a lot for the under-development of the country as external variables and the political commitment of the period added to the decline of economy at home. The civil unrest, the struggle for political power, the practice of command economy that alienated the private sectors from the economic activities, limitation of finance and poor infrastructure were among the internal factors that contributed towards retardation of economic growth until 1991.

Post-Dergue (1991)

Following the change of Government in Ethiopia in 1991, on the demise of socialist oriented economic policy, a marked departure from the planned economic policy towards a market oriented economic policy (Alemayehu and Befekadu, 2002:4) was witnessed. Ethiopia oriented a market-led strategy and began to apply the privatisation policy into practice. The Government of Ethiopia also embarked on a continuous programme of economic reform including trade liberalisation, privatisation and deregulation. In this regard, the reform programme had achieved the success of stabilising the economy – aiding the transition to a free market system.

The economic growth averaged about five percent per annum between the periods 1999/2000 to 2004/05, while population growth average per capita income rose only by about 2.1 percent per annum. Although the Government adopted a strategy of ADLI, with an emphasis on agriculture as the generator of primary surplus taking advantage of backward and forward linkages to fuel the transition of a more modern economy, more than 31 million people still remained in the grasp of severe poverty with an income of less than 45 US cents per day. According to present estimates between six and 13 million people are at a risk of starvation each year (DTIS, 2004:12, MoFED, 2005). Whereas, for the fiscal year 2004/05 Ethiopia recorded a 15.1percent increase in agricultural food production as addressed by Prime Minister Meles Zenawi in his press conference to private and public press (Capital volume 8 No. 372 published on January 29, 2006).

It is possible to deduce that the development plan of the Government has focussed on agricultural development to provide all resources to the industrial sectors as a catalyst for economic growth. This policy attempted to eliminate and/or minimise barriers to trade and tried to simplify bureaucratic regulations and procedures to attract domestic and foreign investors. However, due to cumbersome bureaucratic practice, rampant corruption, unappealing land policy and other social factors the effort of the government remained unimplemented and the country's cumulative economic growth has not met targets as anticipated.

The growth trend analysis from 2000/01 to 2004/05 reveals the following pattern (Getachew Adem, 2005).

- Agriculture: 11.5 percent to 15.1 percent
- Industry: 5 percent to 3.6 percent
- Distributive Services: 5.2 percent to 6.9 percent
- Other services: 4.5 percent to 5.9 percent

As stated by the Prime Minister, Meles Zenawi, the agricultural output had recovered during the 2004/05 crop year due to adequate rainfall in the country.

In a nutshell, the Government acknowledges the flourishing of private sector into market-oriented economic movement and encourages widening the involvement of private sector. However, there are

many complaints from the private sector that the political party (state)-owned enterprises are dominating the market and negatively affecting competition.

Trade Balance

The limitation of industrial products and the nature of global trade forced the country to import large quantity of foodstuffs, capital goods, spare parts, raw materials for the infant industries and fertilizers, pesticides, chemicals and other agricultural inputs to satisfy the needs of the society at large and the consumers particularly. On the other hand, due to lack of high value exports such as minerals, petroleum and other natural resources the volume of import exceeds the volume of export, which in turn leads the country into deficit in trade balance.

According to the 2002/2003 (CSA) data, the country's export volume shows an amount of ETB3,846.6mn (US$41.9mn), while the import value was ETB13,566.5 mn (US$1,478.4mn) with the deficit balance of ETB9,719.9 mn (US$1,059.2mn) for the year 2002. For the year 2003, the country earned from its export volume ETB4,470.9mn (US$487.2mn), while the payment for its import volume was 23,069.2 million with the deficit trade balance of 18,598.3 million. In summary, during the fiscal period of 2003, both the export and import trade balance was increased at the rate of 16.1 percent and 70.0 percent against that of the year 2002 respectively (CSA, 2004: vi). The CSA *(ibid)* data shared that the deficit for the year 2002 and 2003 estimated at 9.7 million and 18.6 million respectively. The overall balance of payments deficit widened to US$113.8mn in the first quarter of 2005/2006, where as the deficit between import and export accounts US$985.04mn = export-import (i.e., US$182.96mn–US$1068mn).

Impact of Social and Economic Policies on Competition

In an ideal world, fair competition between businesses has been argued to benefit both producers and consumers. Taking the demand side of the benefit, it has been said that economic efficiency, innovation and better quality product at affordable prices is a major manifestation of how the consumers benefit from competition. It is believed that not only the consumers, but also the economy of a country as a whole becomes more prosperous (CI, 2001:5).

Such outcomes are dependent on good governance and related issues. Governance when taken in association with the policy formulation activities of government refers to "the process by which diverse elements in a society wield power and authority and, thereby, influence and enact policies and decisions concerning public life and economic and social development" (Corkery J et al, 1997:2).

Responsibility for deciding on national policies and securing their implementation rests with the government. Policy formulation requires effective action by the head of the state, the executive or cabinet of ministers, and by the administrative services. In parliamentary democracies, it requires capacity for independent scrutiny by the legislature or parliament and subsequent impartial enforcement by the judiciary. All these parts of government need adequate capacity for the work to be done well, but there are capacity needs also among the other stakeholders in the policy formulation process.

The initiative for a policy change may come from politicians, for example, resulting from an election manifesto from officials in response to new information about changing situations or difficulties in implementing present policies or from organs of civil society *(Ibid: 3)*. If these initiatives do not accommodate interests of the different groups in the society, they can distort competition through regulation, intervention and lack of effective infrastructure (CI, *ibid: 14*).

In a democracy, the government takes decisions on policy, which in turn, is accountable to the electorate. The electorate is generally not satisfied with being consulted once every four or five years (or whatever the agreed period between elections is). People in all countries are becoming more educated and much better informed. Increasingly, they are becoming better able to articulate their needs and having the confidence to put them forward. In this environment, the government needs to consult the people at large as well as relevant interest groups if they are to produce the most effective policies. Consultation does not mean only that government will ask people their views on the government's proposals but also that the government will listen to proposals that come from their citizens. This is what this report aims to achieve – i.e., to record perceptions of three main stakeholders of a competition regime (consumers, government and business community), on ways of operationalising competition legislation in Ethiopia.

This does not reduce the responsibility of the government to govern but it does mean that in determining policies to be pursued, the Government takes into account the views of those who may affect or are affected by any of these policies. Trade and economic policies, for example, need to take into account the views of trade unions, employers, investors and consumers (Corkery J et al, *ibid*: 2).

In principle, setting up a competition regime might sound a straightforward process. However, in practice there are tensions between government's various development policies, particularly in economies moving from state to private control of industries. Under such a situation promoting an effective

competition regime might not appear a priority of the government.

It has been said that the absence of competition law in some countries has been partly due to government's fear that competition could exacerbate economic inequality and political instability between the different business and ethnic communities. In such circumstances, choices are made to emphasise on social harmony over competitive business practices. Governments in some countries have also opted to balance the need for competitive business practices with the belief that many people in their countries are poor not because of badly distributed incomes, but because total income is too low to be adequate for all, no matter how it is distributed.

Thus, a government may wish to increase its industries' overall competitiveness in order to increase the total income to be distributed but the two goals of more competition and greater overall income – can conflict. In trying to enhance national champions the most important national industries for the government may subsidise and protect certain firms at the expense of their taxpayers and consumers.

This tension between trade and competition policies has grown during the past three decades, as national economy has become more inter-dependent and inter-related. In addition, the consensus emerging from the WTO, IMF and WB has been to promote liberalisation, privatisation and the removal of national barriers to trade – as an engine for better economic growth.

Consequently, social and/or economic policies of a country either positively or negatively affect the competition regime in that country. To see this in Ethiopia, some eight policy orientations namely: industrial policy, trade policy, regulatory policy, investment policy, government procurement policy, labor policy, development policy, and policy for SMEs are briefly analysed as follows.

Social and Economic Policies

Industrial Policy

Since 2001, the country has adopted an Industrial Development Strategy, which clearly recognises the private sector as the engine of growth and industrial development with a focus on, *inter alia*, export-led industrialisation and competitiveness. This strategy also follows the line of ADLI by incorporating the participation of the rural areas/peasant communities; labour-intensive industrialisation/technology as a preferred option for employment creation; coordinated foreign and domestic investment; strong leadership role of the government; and co-ordination between government and the private sector (MoTI, 2001: 5-89).

To strengthen the principles, it has been elaborated in the document that there is a government commitment to work towards creating an enabling environment for the private sector; achieving macro-economic stability; creating and facilitating modern and easily accessible financial system; construct and provide reliable development infrastructure; establishing modern, accountable, transparent and satisfactory governance system; and establishing modern, independent and reliable justice system *(Ibid).*

Regarding competition in the industrial sector, the policy document provides for the significance of a strong competition to realise effective resource allocation in the country and also the importance of attaining competitiveness to be a part of the international economic system. Moreover, the document also recognises that formulation and implementation of strong sectoral policy is essential to make the private sector to accept and put into practice the principles of competition. It has been elaborated in the document that any support from the government to the private sector should be to build the capacity required to be competitive in the market, provided that the latter is committed and ready to sacrifice its resources in order to make use of the support expected from the government *(Ibid).*

Sub-sectors such as textile and clothing, leather and leather products, food processing, in particular, meat, cereals, edible oil and fruits, have been identified to drive the industrial process *(Ibid).* The facilitating role of the government, in terms of creating an enabling environment for private sector development and industrialisation and when appropriate, its intervention to correct market failures are reiterated in the strategy. Also recognised is the importance and effectiveness of PPP *(Ibid).* Hence, for the time being, no appreciable adverse impact is observed or otherwise expected from the industrial policy against competition and competitiveness. It has been claimed from the government's side that the good policy orientation in the sector has resulted in an increase of productivity and GDP share (NBE, 2004).

The opinion of the private sector, calls for radical transformation of existing laws, regulations, policies, institutions, social attitudes and motivations. Furthermore, it has been said, "Such a structural change leads to increasing employment opportunities, higher labour productivity, increased capital stock, etc." (The Reporter, January 28, 2005).

Trade Policy

The trade regime is a part of the overall incentive structure. Trade reforms are important for the modernisation of the economy and are an aspect of the transformation from an inward oriented to an outward oriented economy. Trade policies are also of

vital importance for the transfer of technology, management know-how and for increasing the efficiency of the economy including the non-tradable sector through competition for resources (MoTI, 2004b: 21).

For a country like Ethiopia, with little market power, open trade policies are an instrument available for the transformation to a modern economy. However, for a variety of reasons, Ethiopia has not fully realised the benefits from its trade reforms that began in earnest in the early 1990s. It has been argued, "the country is certainly better off under the liberalised trade regime compared to the highly restricted trade regime of the *Dergue period*" *(Ibid)*. To make trade one aspect of the transformation of the economy, it needs support from other policies, institutions and infrastructure to realise full benefits from increased integration with the world economy.

During the Dergue era, import trade of Ethiopia remained severely restricted due to a combination of high tariffs and a plethora of quantitative restrictions. Tariffs were as high as 230 percent on certain luxury consumer goods and many of the intermediate and investment goods, imports to public sector enterprises were allowed at zero or low duties. The quantitative import restrictions on imports by the private sector included direct import prohibition (a long 'negative list'), quotas, strict licensing and foreign exchange rationing *(Ibid)*.

In August 1993, the new Government embarked on a comprehensive trade reform program aimed at dismantling quantitative restrictions and gradually reducing the level and dispersion of tariff rates. The negative list used to determine eligibility for imports through the foreign exchange access was reduced significantly. Currently, quantitative import restrictions are applied only to contraband items, harmful drugs and armaments for security reasons *(Ibid)*. Both, tariff levels and dispersion have been reduced significantly under tariff reforms. Specific tariffs have been converted into *ad valorem* rates. The average (un-weighted) tariff rate declined from 28.9 percent in 1995 to 17.5 percent in 2002. The degree of dispersion of tariff rates, measured by the coefficient of variation declined from 82.4 percent to 69.7 percent.

It has been argued by the government, "there has been substantial private sector growth in recent years, in part as a result of a more open and liberalised economy, and in part due to the rebound from years of unsettled domestic and external conditions" (MoFED, 2005:54). Moreover, it has been said, "with the return of peace and economic stability there has been renewed confidence and a surge in business activity". Examples cited in this regard include: value added in services grew by about 6.2 percent in the last two years, in industrial output by 7 percent and in construction by 8.2 percent. Similarly, there has been a major take-off in firms that produce cut flowers for the export market in Europe" *(Ibid)*.

The principles underlying the PASDEP strategy include a commitment to ease the environment for private investment and business activity, to replace the hitherto significant role of the state with greater domestic and foreign private participation and to strongly support the growth of export industries. The overall strategic framework is comprised of the Government's Industrial Development Strategy, implementation of the findings of the Diagnostic Trade Integration Study, the ongoing privatisation programme and the National Micro and Small Enterprises Development Strategy.

Last year, an Investment Climate Assessment Study was undertaken which analyses the conditions for private investment and enterprise growth in Ethiopia drawing on the experience of local firms to pinpoint the areas where reform is most needed to improve the private sector's productivity and competitiveness. The study confirmed that improved conditions prevail in business registration and licensing, customs clearance, telecommunication services and labour regulations. The update also signaled concerns in areas such as access to land, the firms' perceptions of the overall tax regime, access to credit, and utilities (electricity and water).

As a way to build on the progress, the government says that it is planning to work hard towards more participation of private sector development in the future. To this end, it has been proposed that:

- increased competition would be seen through progressive number of cases ruled by the Investigation Commission, five to nine cases per annum in the next five years;
- to privatise 30 enterprises per annum to meet the target of seven percent, 16 percent, 27 percent, 40 percent, and 55 percent in the next five years until 2010; and
- advance the simplified and faster business registration and licensing processes with targets including: a) reduce the time spent by individual business persons, companies and associations from 47 minutes in 2004/05 to 35 minutes in 2009/2010; b) reduce time required to register a foreign investor to start a business from three hours in 2004/05 to half an hour in 2009/2010; and c) reduce time required to get permit for foreign investors from 60 minutes in 2004/05 15 minutes in 2009/2010.

On the other hand, observers argue that efforts being made to realise economic freedom in Ethiopia are not sufficient. One group argues from the policy importance point of view and says that the importance given to trade sector has been too small. Elaborating this (Ladd, 2003: 2) they submit that:

"Given the importance of trade, one would expect the effects of different trade policies to be thoroughly dissected and analysed in Poverty Reduction Strategy Papers (PRSPs) – the flagship development framework of donors and national governments. But evidence suggests otherwise. This suggests that, despite the rhetoric of PRSPs, trade policy is not determined in a participatory way that draws on the perspectives and aspirations of different groups of people in each country. In the absence of ex-ante impact studies, there is also no reason to believe that trade policy has been designed to maximise its contribution to poverty reduction".

The other groups says, "a least efficient country such as Ethiopia, where custom clearance requires an average of 30 days, would *ceteris paribus* nearly eliminate trade" (WTO, 2005: 124). In addition to this, the 2006 Index of Economic Freedom puts Ethiopia at the 133rd rank, out of the 161 countries analysed with 3.7 average score. The summarised report on Ethiopia reads as follows:

"The Government continues to promise economic reform, but progress has been slow: Nearly 200 state-owned enterprises have yet to be privatised, corruption is widespread, bureaucracy is burdensome, and much economic activity occurs in the informal sector. In addition, taxation is unevenly enforced, the judiciary is overwhelmed, and the key sectors of the economy remain closed to foreign investment. The Government has taken some steps toward reforming the civil service, improving infrastructure, and removing regulatory impediments to investment and business establishment. Land-locked Ethiopia depends heavily on Djibouti for access to foreign goods. Ethiopia's government intervention score is 0.5 point worse this year (2006); however, its trade policy score is 0.5 point better, and its fiscal burden of government score is 0.3 point better. As a result, Ethiopia's overall score is 0.03 point better this year. Therefore, one can easily analyse that much is to be done to make Ethiopia's trade regime free and competitive as well".

Regulatory Policy

Previously, government procedures and paperwork was usually complicated and time-consuming; regulation has been too bureaucratic, impartial and inflexible. However, following the 1996 comprehensive civil service reform programme, measures are being taken especially since 2003, on business licensing, import-export regulation, foreign exchange regulation, and others have been relatively simplified. Provision of the service brought down to one-stop-shop approaches and as a result, some improvements are registered in 2003/04 that resulted in easy entry and exit of commercial activities.

However, Miles et al. (2006: 180) in 2006 Index of Economic Freedom argues that:

Ethiopia's cumbersome bureaucracy deters investment. According to the Economist Intelligence Unit, "Corruption in Ethiopia poses various problems for [the] business environment, as patronage networks are firmly entrenched and political clout is often used to gain economic prowess". The US Department of Commerce reports, "Ethiopia's regulatory system is generally considered fair and honest, but not always transparent. There are instances in which burdensome regulatory or licensing requirements have prevented the local sale of…exports, particularly personal hygiene and healthcare products". The EU reports that corruption imposes a serious burden on the economic activity.

Investment Policy

Investment is, without doubt, one of the primary engines of growth in all economies. However, its effectiveness rests on strong complementarities with other elements in the growth process, most notably technological progress, skill acquisition and the development of innovative capabilities. These elements make investment a natural point of departure for the government seeking to formulate a robust development strategy.

The link between investment and these other determinants of growth requires among other things a favourable macro-policy environment and specific policies and institutions aimed at encouraging savings and attracting and directing investment to key sectors in the economy thereby enhancing the contributions of investment to skill formation, technological change, competitiveness and economic growth. A clear understanding of the link between investment and technological progress is an essential prerequisite for designing an effective national investment policy and an investment promotion strategy (UNCTAD, 2002:1)

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. The areas include those sectors formerly reserved for the government, hydropower generation, and telecommunication services. Likewise, 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.

It has been argued that Ethiopia's record in attracting FDI has been poor. More than four-fifths of the projects that have received licences have not been implemented. This lackluster record reflects several constraints including the same constraints that operate on the domestic private sector and that arise

from a negative perception of FDI in the country including in some parts of the government. Equally, foreign investors have perceptions conditioned by the past poor record of the *Dergue regime* policies, famines and poor infrastructure compared to other sub-Saharan countries.

Government Procurement Policies

Government procurement is by competitive bidding. There are no burdensome administrative procedures or special documents regarding government procurement. However, 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 January 12, 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, actions being taken following the proclamation like, establishment of independent Public Procurement Agency; and introduction of procurement directives to smoothen the implementation of the proclamation seem to be evidences that the government is serious to improve the structural predicaments related to public procurement in the past. Previous public procurement systems have been complained to be discriminatory, unfair, and anticompetitive and based on discretional power of the government officials. In the newly introduced directive, it has been reiterated, "No candidate shall be discriminated because of nationality or other reasons which are not related to the evaluation criteria except in accordance with the rule of preference provided for, in the proclamation"[1] (MoFED, 2005c: 2).

The provision regarding open international bidding, which necessitates only when there is a determination of threshold and an issuance of directives by the Minister of Finance and Economic Development, seems to be one of the limitations of the proclamation regarding competition.

Labour Policy

The country's current labour policy has been based on Labour Proclamation No. 377/2003, which is in effect since February 26, 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 co-operative efforts have been the major objectives of the policy. It has been argued that the proclamation is compatible with international conventions and other legal commitments to which Ethiopia is a party.

The new statute represents an important tool for labour unions and employers to participate in all labour matters (Sommer, 2004: 5-6). The innovation concerns the right of workers without distinction whatsoever, to form organisations of their own choosing and the right of these organisations to organise their activities without interference by the public authorities and not to be dissolved by administrative authority (Article 114(1), (2) and (7)). Labour Proclamation 377/2003 amends the previous Labour Proclamation by adding some crucial and important issues to benefit employees, employers and working environment.

The policy also intends to address unemployment related problems in Ethiopia, especially in urban areas, which is one of the serious challenges. Working age population (labour force) stood at 54 percent in 2003/04. It has been argued that it is important to note the fact that pressure on the labour market comes directly from the supply of labour, which in turn is induced by the growth rate of the population. Moreover, it has been said that the challenges being faced by the government in fulfilling the demand for increased employment in a progressive way are twofold: a) managing the dynamics of population growth; and b) expansion of labour-intensive productive activities (MoFED, 2005: 16).

Development Policy

The country's overall economic development strategy has been agriculturecentred development as a means of promoting industrial development and market-oriented economy. ADLI policy, therefore, came in the wake of a series of trails to promote agricultural development. A major push on growth has been identified as essential in order to have a lasting impact on poverty, as well as to finance the necessary social investments for human development (MoFED, 2005:5). However, as has been said in the PASDEP document, there is little hope of significantly reducing human poverty in Ethiopia. For instance, as projection shows a growth rate of four percent p.a., there would be about 22 million absolutely poor people by 2015, living at or below the food poverty line. Conversely, calculations show that a growth rate of about eight percent p.a. would have to be sustained to reach the Millennium Development Goal (MDG) of halving income poverty by 2015. This compares to an average rate of about five percent over the 10 years 1993-2003, and of about five percent during the Sustainable Development and Poverty Reduction Programme (SDPRP**)** I period (2003-2005).

Moreover, it has been said that alleviating poverty and transforming the structure of the economy has been the major objective of Ethiopia's economic development policy and/or programmes. The ADLI Strategy adopted in 1993, has been designed to serve this end. This strategy aims at improving agricultural production and productivity as a basis for improved income and living conditions for the small holder

farming population on the one hand, and as a source of improved export earnings to finance investment elsewhere in the economy. Improved farm income would also generate sufficient demand for the industrial sector instigating dynamism and inter-sectoral linkages. Thus, ADLI is a strategy that is expected to generate development processes, which directly addresses poverty eradication (MEDaC, 2001:5). However, quite a lot of debate emerged when the government ADLI policy couldn't meet the anticipated goal of self-sufficient food production and poverty reduction.

Policy for Small and Medium-sized Enterprises (SMEs)

SMEs are widely acknowledged to contribute towards promotion and development of inventions, minor inventions and industrial designs and thereby generate employment opportunities in the country. SMEs are particularly important in the context of Ethiopia's poverty-reduction strategy because they are seedbed for the development of medium and larger enterprises, and because they absorb agriculturally under-employed labour, and diversify the sources of income for farming families. Areas of high potential for SMEs include animal husbandry, poultry, silk harvesting, honey production, small-scale garment manufacturing and metal work, construction, and increasingly urban-based services (for example - solid waste collection, parking lots, small shops and repair services). It is estimated that as a result of support to date about 96,000 SMEs were strengthened and some 280,000 jobs created.

In order to improve the performance of SMEs, it has been stated in PASDEP that strategic emphasis is to be given to growth (rural, industry and export), particularly to the promotion of micro and small-scale enterprise development, construction etc. The recent experience of the Addis Ababa City Administration in SMEs development linked with Technical and Vocational Education Training (TVET) and low-cost housing programme is going to be scaled up and rolled out to other towns in the country (MoFED, *Ibid*). With the growing urban and small-town economy, and increased domestic demand, there are substantial opportunities for SME growth.

The Government's support is mostly channelled through the Federal Micro and small Enterprise Development Agency (MSEDA), and increasingly through Regional MSEDAs. Activities include basic training in technologies and business skills, development of low-level service working premises, the provision of micro-credit and information on markets and techniques, and working with producers to identify constraints and bottlenecks. Plans for the immediate future include providing more basic training in textile skills, upgrading business development services by strengthening the capacity and providing staff training to Regional MSEDAs; creating market linkages with foreign importers with a special emphasis on handicrafts, especially handloom '*shemma*' products, leather, bamboo, and basketry.

However, as the sector is limited to small enterprises like handicrafts, cottage industries, wood, metal works and the like, only local citizens are mostly handling them. And when seen from domestic point of view, the policy of this sector needs to be seen to give some rooms for foreign investors and facilitate level-playing ground.

Need for Consumer Protection Policy

Consumers have been protected by different laws that specify consumer protection as their primary concern; numerous other provisions have the effect of protecting the consumer, for example by streamlining the prosecution of fraud, protecting property or facilitating litigation. As a result, the boundaries of consumer protection law are not easily drawn (Cartwright, 2001:1). However, malpractices of trading business and unethical service provisions have been affecting consumers in Ethiopia. Lack of complementary consumer policy, together with encouraging better implementation, monitoring and enforcement for competition regimes has contributed a lot for such illegal trade practices.

Using the language of efficiency and equity rather than market and social goals, Ramsay (1984: 12) observes "an efficient policy is ultimately justified by equity since consumers are able to obtain goods and services of a quality, on terms, and at the price that they are willing to pay". Although helpful for the purpose of structure, the market/social distinction is imperfect in practice. Moreover, it has been argued that the market, underpinned by private law, is an important technique for ensuring that consumers are able to purchase the goods and services that they want, and that intervention which helps the market to function is valuable. However, social goals are being recognised as increasingly important and it is important for any effective consumer protection policy to address both (Cartwright, *Ibid:* 2).

The main characteristics of consumer protection policy has been argued to be that the supplier acts in the course of a trade or business, the recipient is a private individual, and the recipient acts in a private capacity. It should be remembered that it is important not to limit the term 'consumer' to contracting parties, as that might exclude the ultimate user of goods and services. Indeed, it is possible to develop a much wider concept of the consumer than has traditionally been envisaged.

A private individual who receives services from a non-commercial state authority, such as the user of

National Health Service facilities or even the recipient of state benefit, might be aptly described as a consumer. As Kennedy stated, "consumerism is just as concerned with the supply of services as with goods. The consumer merely becomes the client, or patient, or whatever rather than the shopper". We could even go as far as to equate the word 'consumer' with 'citizen'. Moreover, it has been also pointed out that the consumer interest is involved whenever citizens enter relationships with bodies, such as hospitals and libraries (*Ibid*: 2-3).

The combination of a strong consumer policy that empowers and informs consumers, and competition regimes that are effective and enforceable, actually promotes the development of firms that are more efficient and competitive. Implementing consumer policy as a complement to a competition regime will reinforce the benefits of competition for both consumers and markets, and have a positive effect on economic development.

It has been well-acknowledged that domestic competition creates the pressure for companies to innovate. At the same time, anti-monopoly policies remain vital, particularly in relation to horizontal mergers, cartels and other strategic alliances. There are, therefore, both persuasive economic and welfare arguments to support the development of consumer policy alongside competition policy, in both developed and developing countries. Such a move will help to ensure that the development of market economies – and the promotion of liberalisation and deregulation are measured and balanced against the wider social goals of the community. And yet, researches show that effective consumer policies have not emerged, particularly in developing countries that lack both competitive markets and strong consumer welfare lobbies (Ibid). Different Laws in Ethiopia have been used to protect consumers for years. Ethiopia does not have a comprehensive Consumer Protection Policy and Law. Consumer issues are being addressed in different regulatory regimes like the penal code, civil code and other specific regulations. Much more is to be done to see effective Consumer Protection Policy and Law in the country.

Any Other Policy Affecting Level of Competition in 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. The commercial code is antiquated, not amended since 1960s, and the under-staffed judicial system is inadequate. In the 2006 Economic Freedom Index, it has been said that:

"Ethiopia's judicial system remains underdeveloped, poorly staffed and inexperienced, although efforts are underway to strengthen its capacity. While property and contractual rights are recognised and there are written commercial and bankruptcy laws, judges lack understanding of commercial matters. There is no guarantee that the decision of an international arbitration body will be fully accepted and implemented by Ethiopian authorities".

In summary, 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 liberalise the economy particularly in the financial and telecommunication sectors, attract FDI, speed-up the privatisation process, streamline the bureaucracy and maintain political stability. Other factors, such as favourable weather conditions, external market situations and consumer satisfaction will also play an important role over the coming years.

Market and Competition

The theme of this chapter is focused on nature of market in Ethiopia. In principle, the market for agricultural commodities is found under competitive conditions with a large number of widely distributed small producers/farmers, who generally have to sell their entire output, irrespective of the price level. It is possible to agree that the market for grain is the largest of all markets in Ethiopia in terms of volume handled. As personal observation of the writers, millions of farmers and consumers as well as a number of marketing agents are engaged in the production and consumption of grains.

Nature of Competition in Market

The main features of the Ethiopian marketing system are marketed volumes through alternative channels, although it is difficult to determine the volume of grain marketed annually, due to its fluctuation from year to year, depending on the weather and rainfall conditions (Gebremeskel et al, 1998:10).

With regard to the industrial sector, the total number of large and medium scale manufacturing establishments for the country as a whole stood at 1,074 according to the 2003 and 2004 CSA and World Fact Book of 2006, data in which contributes an approximated rate of 12.7 percent to GDP. Clothing and food processing industriesh located indifferent areas of the country and compete with each other play a dominant role in satisfying the need of consumers. Besides, domestic and international competitiveness for a firm is influenced by internal and external factors in which these factors influence the competitiveness of the industries (Berhanu & Kibre, 2002).

Ethiopia is in fact, one of the world's least industrialised countries. As witnessed in the latest United Nations Industrial Development Organisation

(UNIDO) indicators, ranking 93 countries for 2000. Ethiopia is the last in terms of manufacturing value added per capita, with US$12, well below Kenya (US$34), Madagascar (US$25), and Zimbabwe (US$130). 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.

For the country as a whole, the establishments are classified under the manufacturing of food products and beverages industrial group constituting the largest share accounting for 30 perccent of the total output (which includes: flour, bread, edible oil, soft drinks, beer and alcoholic drinks). Manufacturers of furniture and non-metallic mineral products follow, which constitutes 16.0 and 11.5 percent of the total respectively.

Market Concentration

Producers have options to sell their grain products to retailers or consumers bypassing the grain wholesalers in Ethiopia. Gebremeskel et al (1998) argued, "unlike the size distribution of traders at the national level, the extent of inequality in market share at the local market level differs from market to market, and from crop to crop. After disaggregating the number of local traders operating in individual markets, no markets in the sample had a level of concentration for all grains collectively, this would be considered anticompetitive". However, this does not mean denying of market concentration in some areas of the country on specific types of crops like in Gondar and Baherdar for Teff (staple) and Sorghum; Maize in Diredawa and Bahirdar; Barley in Assassa and Shashemenie and Wheat in Nazerath and Shashemene in which the market concentration was found to be over 40 percent.

Generally, as stated by Gebremeskel et al with these possible exceptions, the structure of the grain markets generally does not indicate that few traders in the local markets control a sufficiently large share of the marketed volume at the wholesale level, which they could use to influence grain prices to their advantage.

In terms of industries, the manufacturing sector concentrates in the production of 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 the total value. Production by state-owned enterprises is concentrated in food and beverages, textiles, clothing, leather products, tobacco, chemical, rubber, plastic and cement sectors.

The share of the three industrial groups (food processing, beverage and edible oil industries) combination exceeds 57.4 percent of the total number of manufacturing industries, which indicates that the Ethiopian large and medium scale manufacturing industry is characterised by a high concentration (CSA, 2004:6).

Besides, the soft drink industry is totally occupied by the largest two companies: MOHA and East African Bottling that indicates the existence of market concentration in the industrial sector, which means market concentration addresses 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.

Private sector manufacturing activity follows a similar pattern. Production is concentrated in bakery products, meatpacking, textiles, footwear, construction, metal works and furniture.

As is observed, the grain market structure flows within the streamlines of producers, rural assemblers, inter-regional traders, wholesalers, and brokers in terminal markets, processors, retailers and finally consumers. Market structure is the term used to describe the way in which industry competitors interact. Economists view the nature of market as perfect competition, imperfect competition, monopolistic competition and monopoly as well as of oligopoly nature (Samuelson and William, 1988). In this regard, let us check the market structure in Ethiopia with respect to industrial sectors accordingly:

- Cement industry, Sugar industry, Ambo Mineral Water industry, Ethiopian Telecommunication, Ethiopian Postal Service, and Ethiopian Electric Corporation could be cited as *monopoly markets* 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 the basic rights of consumers, the right to choose among different products and services. For instance, in the five star international hotel 'Sheraton Addis', one cannot get soft drinks manufactured by the East African Bottling Ltd, (Coca Cola and Sprite), only because the hotel does not serve soft drinks not produced by its sister enterprise, MOHA that produces Pepsi and Mirinda.
- Plastic industries and soap industries could be taken as *monopolistically competitive.*
- If we look at the leather & leather products sector, the market *is not concentrated.* There we have about 20 industries in the market with approximately a few variations in the market share. Further, study is needed to know the market concentration in leather industry.
- The mining sector especially, the gold mining found to be under the *monopolistic competition* of an individual private firm.

Existing or Potential Barriers to Entry

Thanks to the market liberalisation of 1991, most of the institutional barriers to grain trade such as: the enforcement of the quota system, price control, preferential treatment given to state enterprises and co-operatives, limitations imposed on capital ceilings for wholesale and retail trade, restrictions on the number of merchants in a particular market is not observed (DTIS, 2004: 18). Even though, such obstacles are no longer obstacles to private grain traders, limitation of finance, infrastructure like road and other means of communication may remain barriers to entry.

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 percent – 240 percent at the beginning of the 1990s to 0 percent – 80 percent in 1995. The current tariff structure, introduced in 2003, consists of six rates: 0 percent, five percent, ten percent, 15 percent, 20 percent and the highest 35 percent. During the same period, the tariff bands (the number of official tariff rates) were reduced from 23 to six. 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, where the maximum rate will be 30 percent (DTIS, 2004: 22).

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 are more related to the Integrated Framework in particular. For instance, few enterprises owned by the government and / or affiliated party, have been alleged by the private sector for controlling the supply of certain goods and services in the market. Ethiopian Telecommunication Co-operation (ETC), Ethiopian Electric Power Corporation (EEPCO), and Ethiopian Postal Service could be cited as examples of government monopolies. These are the only producers and / or suppliers of the products and / or services in the respective sector (s). Although power generation and transmission up to 20 KMW in the energy sector has been allowed for local private investment very recently, not yet realised.

Limitation of quality raw materials, non-availability of infrastructure, which affects transaction costs, trade and overall industrialisation policy, exchange rate policy and the like are affecting competition in the market.

With respect to tariffs, nowadays, these do not constitute a meaningful trade barrier to access the Ethiopian market and all Ethiopian trade partners' benefit at least from the Most Favoured Nation (MFN) regime. The principle of MFN is aimed at trading of equal rate with the exclusion of barrier to trade. The principle also enforces states to offer another state in trade treaty that may lose its option of discriminatory tariffs (Henderson, 1998: 271, 279 & 356). However, there are apparently some implementation difficulties. For example, within the 2003 tariff schedule, there remain some products with an import duty of 40 percent. For some other products, the applied duty rate could be dissimilar between trading partners.

Introduction of a market-oriented economy instead of the earlier command regime is considered to have facilitated an appreciable GDP growth in the economy.

Focus of the Ethiopian economy on agriculture has resulted in the growth of this sector and has made it competitive. However, for Ethiopia to progress further in the future would require substantial industrial / manufacturing sector growth – something which could be catalysed by evolving an enabling environment for industrial growth and ensuring a level-playing field by implementing effectively the country's competition regime.

Competition Law

Ethiopia as a long polity underwent different types of economic transformations, which have been characterised by its unique kind of traditional agrarian economy. Within this dominant type of economy the principal economic actors and the form of ownership of the economic resources has been changing depending on the economic policy orientation of the governments.

The pre-1974 imperial regime claimed to have a free market economic policy orientation. However, it failed to promote market competition. Of course, the government has been merited for its introduction of modern legal system in the country including the codification and promulgation of the commercial code, which primarily regulates the types, formation and dissolution of commercial partnerships trademark and trade name registration and the legal protection that should be given for such commercial rights.

Post–1974, Ethiopia's economic history was characterised by its socialist form of economic system in which competition in the market cannot be envisaged as a matter of ideological principle. The main economic actor in the economic system was the government. The economy was highly centralised and there was neither real nor nominal kind of economic competition in the market. In this period, let alone having a competition law as such, even the existing commercial law was in practice quite rarely. This period came to an end in 1991, wherein Ethiopia experienced another historic breakthrough both in its type of political system and economic policy orientation.

Then the transitional government of Ethiopia and the subsequent successions officially proclaimed that the economic policy of the country is a free market economy. Though this has been the policy direction, competition law as a consolidated form of law is not yet in place except for the coming into force of Trade Practice Proclamation of 2003. In this period trade practice proclamation No. 329/2003 was legislated with a purpose of regulating trade practices.

As of the coming into force of this proclamation, 35 cases were registered for investigation in the trade practice investigation commission office out of which 13 cases got decision. Four cases did not fall under the jurisdiction of proclamation 329/2003, whereas two cases required additional information. The rest of the cases were found to be under investigation for hearing.

The weakness of the trade practice proclamation (TPP) is that it does not address all the issues, which should actually be addressed in the competition law. As the proclamation does not incorporate all competition related issues, it is not possible to discuss in detail issues of approaches to horizontal restraints, vertical restraints, dominant market position, mergers and acquisitions cross-border abuses, checks and balances, and other further details.

Objectives, Scope and Coverage of the Competition Law

TPP, promulgated with the general objectives of making the trade practice in consonance with the free market economic policy aims: to establish a system that is conducive for the promotion of competitive environment, regulating anticompetitive practices in order to maximise economic efficiency and social welfare; and to safeguard the public from price hike and for equitable distribution of goods and services in times of regular and short supply.

With this general objective, the proclamation covers certain areas of material jurisdiction to be exercised by the investigation commission. The commission looks into issues of anticompetitive practices: such as agreements on joint pricefixing, collusive tendering as to determine market price; market or consumer segmentation, allocation by quota of production and sales, concerted refusal to deal, sell and render services as detailed within Articles 6 and 11 of the proclamation.

Institutional and Procedural Aspects

Structure of the Trade Practice Investigation Commission

Conventionally, structure refers to how a given institution is organised. It is concerned with how vertical and horizontal accountabilities are set. Accordingly, the commission is structured to undertake its power within the Ministry of Trade and Industry (Art. 12). The commission is hierarchically accountable to the Minister of Trade and Industry. The commission has also a secretariat with the general power and duties of implementing the directives issued by the commission to execute administrative measures, keep minutes, reports and so on (Art. 18). The accountability of the secretariat, however, seems to be both towards the commission and the Ministry, because the secretariat is a department under the organisational structure of the Ministry (Art. 2(8)).

Number and the Procedure for Selection of the Members of the Commission

The proclamation states that the commission shall have members selected from government, private organisations and consumer associations (Art. 13(a)). The law, however, doesn't specifically state the actual number of members that the commission should be composed of. This may be specified in the rule of procedure, which is not available at our hand for the time being.

As a matter of fact, currently, the Commission has five members chaired by the minister of justice, with members including economic advisors to the head of Government (the Prime Minister), National Bank of Ethiopia, and Director General of Quality and Standards Authority of Ethiopia and Director General of Federal Co-operative Commission. The consumer association and the private sector are not represented in the commission as per the stipulation of the law. Concerning the selection, members of the commission including the chairman are appointed by the Prime Minister upon the recommendation of the Minister of Trade and Industry (Art. 13(2)).

Powers of the Commission

The Commission has been empowered by the proclamation to exercise investigative, prosecutorial and adjudicative powers such as:

- investigation of complaints submitted to the commission by any aggrieved party in violation of the provisions of this proclamation;
- compelling any person to submit information and documents necessary for the carrying out of commission's duties;
- compelling witnesses to appear and testify at hearings;
- taking oaths or affirmations of persons appearing before it, and examine any such persons;
- entering by showing the commission's ID card and search the premises of any undertaking during working hours, in order to obtain information or documents necessary for its investigation;
- appointing or employing, upon the approval of the Minister, experts to undertake professional studies as may be necessary; and

- taking administrative measures or/and give penalty decisions on any complaints submitted to it.

Though the Commission is empowered to exercise such powers, its decisions may not be final. In the case of administrative measures and penalty decisions, approval of the Minister is a must. Thus the Minister can amend, or remand, approve, reverse the decisions of the commission (Art. 15 (2) and (3).

Concerning executioner power, it is the Ministry, which is authorized to execute and it may order the police in order to execute any administrative measures or/and penalty decisions of the commission (Art. 16).

Procedure under which the Commission takes Decisions

Rules of Procedure of the Commission are unavailable, as of the Present: Regarding the meeting of the Commission, quorum shall be constituted when more than half of the members are present at meetings of the Commission. Decisions of the Commission shall pass by majority vote and the chairman shall have a casting vote in case of a tie.

Interface between Competition and Regulation in Select Sectors

Along with the development of variety of economic policies, infrastructure development like, electricity to power industries, telecommunications to support commerce, roads, railways, airways etc. to transport people and goods, have been recognised as major factor for the nation's economic growth. As argued by writers, Cecilia Briceno-Garmendia et. al. (2004), "promoting growth, reliable and affordable infrastructure can reduce poverty and contribute to the achievement of the MDGs".

The writers of this paper analyse how regulation works on some utility services such as: electricity, telecommunication, pharmaceutical, and financial services in which two of them (Electricity and Telecommunications) are under government monopoly.

Pharmaceutical Service

It is believed that in Ethiopia, more than 50 percent of the population and 90 percent of livestock rely upon traditional medicine for cure.. The traditional medicine of the country is based mainly upon the use of medicinal plants the history of which goes back to antiquity. Such plants are more easily accessible than the modern pharmaceuticals and are affordable to the majority, especially in rural areas.

In pre-1974, the healthcare system was designed in a way that involves private sectors to play crucial role in the supply and distribution of drugs. Laws and regulation were stipulated for the administration of healthcare system. However, laws and regulation have not been revised with the change of political economy of the Imperial Regime.

In 1974, socialist-oriented political economy replaced the imperial government by the help of revolutionary political upheaval and with the strategy of planned economy, primary healthcare, education, trade, investments and so on. New strategies and policies were developed to empower the politico-economy of the socialist system. Surprisingly, drug related strategy, regulation or policy had never been addressed to assist the control of manufacturing and supply of drugs.

The change of political order of 1991 in Ethiopia resulted in the shift of socialist system into market oriented policies and strategies. The newly emerged political forces proclaimed the policy of free market economy as an appropriate solution for economic growth of the country.

Among the declared policies of the Transitional Government of Ethiopia (TGE), the adoption of National Drug Policy is the most and considered to be as one of the major socio-economic development process to safeguard the society. The stipulated policy focuses on the manufacturing and distribution of just and equitable pharmaceutical services and drugs to all, with the hope to maximise the level of welfare gradually (TGE, 1993). Major objectives of the policy include: Developing the capacity to ensure drug supply efficacy and quality; meet the countries demand side and supply side satisfaction of drug; Create enabling situation to make the price of the drugs affordable and compatible to the purchasing power of the society; control the illegal transmission, manufacturing, importing, distribution, selling and consumption of narcotics and psychotropic drugs in the country.

Drug promotion is one of the activities carried out by pharmaceutical companies to compute for a bigger sale of their products through disseminating information to consumers and health professionals. Information and promotion of drugs may greatly influence its supply and use. Provision of adequate and correct drug information to the consumers and prescriber are essential for rational and safe use of pharmaceutical products.

It has been observed that drugs are being promoted as ordinary commodities. Furthermore, the ever-increasing brand oriented promotion is being observed to have misled physicians not to select the right drug for their patients. On the other hand, the frequent prescription and supply of costly, branded drugs arising from promotion of such types is creating a

non-conducive environment in which the majority of the people can't afford to pay for the drugs they are prescribed with.

Strong regulation of promotional activities and the provision of accurate information to prescriber and consumers are among the indispensable steps that the government should take to improve the rational use of drugs. The 41st World Health Assembly endorsed the ethical criteria for medical drug promotion, which constitute general principles that could be adapted to the situation in member states and urges them to take their own appropriate measures to ensure that medical drug promotion supports the aim of improving healthcare through rational use of drugs.

Establishment of Drug Administration and Control Authority

Being one of the member states, the government of Ethiopia accepted the resolution WHA41.17 by the World Health Assembly on the ethical criteria for medical drug promotion and delegated the Drug Administration and Control Authority with the main objectives: to control dissemination of drug information and promotion, which is stated under Article 22 of the Drug Administration and Control Proclamation No. 176/99.

Powers and Duties of the Authority

Article 6(2) of the proclamation gave the following power, duties and responsibilities to the Drug Administration and Control Authority: setting standards of competence for organisations to be involved/participating in drug trade; issuance of certificate of competence; control the compliance with the set standards; renew, suspend, and revoke the certificate of competence; and providing information to the concerned authority.

Article 6 (9) of the same proclamation urges the authority to: serve as a drug information centre; distribute drug information to the professionals and the public; disseminate current and unbiased information; raise public awareness on the use of drug; and control the quality of raw materials, produced or imported drugs and packing material used for production of drugs.

Electricity Services

Electricity is one of the resources that help a nation alleviate poverty. People in poverty afflicted rural areas have no access to energy to operate machines, as a result of which productivity is negatively affected. According to the PASDEP of 2005, Ethiopia generates only 791 MW out of the potentially estimated available 30,000GW. The responsibility of generating, transmission, distribution and selling of electric power vested in the state owned Ethiopian Electric Power Corporation (EEPCO).

The current electricity coverage in Ethiopia is about 15 percent of the total population. The per capita electricity consumption is about 22.1KWh/year, which is significantly small as compared to the African average 431.3KWh/year (NBE Quarterly Bulletin, Volume 21 No. 1, 2005/2006:5). Although, the coverage of electricity in Ethiopia currently found to be very low, the corporation set a strategic plan to increase the national electrification by 50 percent within the plan period 2006-2010, through the supply of adequate, affordable and reliable electricity on a sustainable basis. According the set strategy, about 24.9 million people are expected to have access for this power.

To meet the set goals, expansion in electricity generation, transmission, distribution and selling at an affordable price is indispensable. It is obvious that sustainability in the electricity sector requires huge investments in which EEPCO engaged in the construction of big hydropower plants and a high voltage transmission line based on a least cost development plan. In this regard, EEPCO works to increase electricity coverage and to maintain sustainability.

The Government has to encourage private investors. In this regard, it has been realised that the government is embarking to encourage domestic private sectors to participate and play significant role in the generation and supply of electric power as stated in the Proclamation 37/1997. On top of this, the government is also expected gradually liberalise the sector.

Accordingly, 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 MW. On the other hand, production and supply of electrical energy with an installed capacity of above 25 MW 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 Regulation No. 7/1996 and as a mended 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 enabling environment for private investment in the sector.

The investment programme, 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, and enhancement of educational opportunities and general betterment of the population.

The Ministry of Mines and Energy, issued electricity services quality standards directive- No. 2/2006, with a main objective to determine the quality standards of electricity services that are provided by a licensee. In its second part the directive came up with the focus of customer compliant handling, record of complaints and its application.

Telecommunication Service

Upgrading, expanding and empowering telecom network and services are essential to support national growth and rural economy. Having basic telephone access in villages helps farmers to acquire adequate and sufficient information of prices for their crops and livestock products. It also improves the efficiency of local administration and encourages the development of trade and small business; facilitates the provision of social services like health, education and agricultural extension.

Despite the fact that population is high, telecommunication coverage is lowest in the world. According to PASDEP of 2005, about 45 percent of the total households need to travel for 15 kilometres to reach the nearest telephone services unit. About 44 percent of households can get telephone service within less than 10 kilometres and about 29 percent of the household are at least 20 kilometres far away from this service. About 94 percent of urban households have telephone access within the range of five kilometres distance.

The Government in collaboration with telecom agency, Telecommunication Corporation set an action plan for wider coverage of fixed and mobile telephone lines. The action plan opts to cover 2,463 and 4,926 million of fixed and mobile lines within the plan period of 2006-2010.

In recent years, Ethiopia has made a huge investment in basic multi-media infrastructure, which includes the laying of fibre optic cables and installation of satellite and radio communication technologies. Moreover, the government of Ethiopia proposed for the downstream telecom liberalisation, which creates conducive situation for competition, wider service coverage options, potentially affordable rates. The downstream liberalisation expected to encourage private sector motivation and participation on the provision of the service.

Financial Service

The history of financial service in Ethiopia begins with the establishment of the then known as "Bank of Abyssinia" in 1905. The first central bank was owned and run by the Egyptian National Bank. At that time, the bank was rendering dual service both as a central and commercial bank.

The Bank of Ethiopia replaced the Bank of Abyssinia in 1931. This bank unlike, the Bank of Abyssinia, was serving as a fully Ethiopian monetary institution. Yet, like the Bank of Abyssinia, the Bank of Ethiopia was rendering dual central and commercial bank services.

During the Italian occupation, Italian Banks such as Banko De Roma, and Banko De Napoli replaced the Bank of Ethiopia. Between 1942 and 1943, there had been another foreignerowned bank known as Berkley Bank in service in Ethiopia.

After victory over the Italian occupation, the Ethiopian government established Government Bank of Ethiopia in 1943. This government bank was rendering service by integrating the services of the former central and commercial banks of Ethiopia. The Ethiopian Monetary and Banking Law that came into force in 1963 separated the function of commercial and central banking by creating National Bank of Ethiopia and Commercial Bank of Ethiopia. Moreover it allowed foreign banks to operate in Ethiopia. Hence, in July 1964, a proclamation known as "Monetary and Banking Proclamation" was promulgated to establish two separate banks, i.e. the National Bank of Ethiopia and the Commercial Bank of Ethiopia.

The National Bank of Ethiopia, established in 1964 with the authority and responsibility vested in it by the Ethiopian Government to: design and print the country's legal tender; supervises all banking service banks in the country; serves as the main national bank of the country in administering and guiding the international, the supply of circulation and monetary reserve.

Commercial Bank of Ethiopia took over the commercial banking activities of the former State Bank of Ethiopia. Banking during the socialist regime following the declaration of socialism in Ethiopia in 1974, the government issued a new monetary and banking proclamation number 99/1975, which replaced the 1964 banking and monetary system. This proclamation issued in March 1975 was based on the rule of command economic system, which promotes centralised banking system. The proclamation also affected in nationalisation of all private banks in Ethiopia. The financial sector under the socialist oriented government left behind constituted only three banks and each enjoying monopoly in its respective market. The following was the structure of the sector at the end of the era: The National Bank of Ethiopia (NBE); the Commercial Bank of Ethiopia (CBE); Agricultural and Industrial Development Bank (AIDB). Basically the function of the Commercial Bank is divided into four major areas.

1. holding in deposit public money with guaranteed security;
2. giving loans for all sorts of commercial and personal needs;

3. offering assistance in matter of foreign exchange to business sector; and
4. providing safekeeping for an individual's most valuable possession.

The first private bank, the Addis Ababa Bank Share Company was established in the first half of 1960s. This bank was also engaged in commercial banking. The bank was active in crop financing providing advice and facilities of newly established Ethiopian enterprises encouraging and sponsoring the accelerated growth of the activities of the private sector in all economic fields. There were two other banks in operation namely Banco di Roma and Banko di Napoli S.C.

The collapse of the military rule in Ethiopia in 1991 brought major changes in the banking and related service sector. Following the change in the economic policy, financial sector reform also took place. Monetary and Banking proclamation of 1994 established the National Bank of Ethiopia as a judicial entity, separated from the government and outlined its main functions.

Monetary and Banking Proclamation No 83/1994 and the licensing and supervision of banking Business No 84/1994 laid down the legal basis for investment in the banking sector:

- With the coming into effect of the licensing and supervising banking business proclamation No.88/1994 a couple of private banks have also emerged and joined the market since 1994.
- The June 1996 proclamation number 40/1996, offered provision for the establishment of micro finance institutions in Ethiopia.

All measures undertaken after the economic reform have that aim of promoting a competitive environment and efficient banking service to the public. Accordingly, at present the number of banks in Ethiopia reached nine and that of insurance companies increased from one to nine. The number of micro-finance institutions reached 27.

At present banking business in Ethiopia is governed by two proclamations. The first monetary and banking proclamation No. 83/1994, defines the powers and responsibilities of the National Bank of Ethiopia, which is the central bank of the country. Proclamation No. 84/1994 sets out the conditions under which commercial banks can provide license and supervise the banking business, which sets out the conditions under witch commercial banks can be licensed. The proclamation No. 86/96 offered the provision for the private investors in insurance service and for establishment of micro financial institutions, respectively.

All proclamations have the aim of promoting competitive environment in the sector. In general components of the current financial sector are the Central Bank (National Bank of Ethiopia (NBE), commercial and specialised banks, insurance companies, pension and social security authority and credit and saving cooperatives. Currently, there is one commercial and one specialised government bank operating compressively with seven private commercial banks.

Regional Integration

In order to ensure the existence of transparency and fairness among economic operators within the region, COMESA has formulated a regional competition policy. The objective of this regional arrangement is to enhance co-operation in the creation of an enabling environment for fair competition in the marketplace, maximising consumer welfare in the COMESA region, through an effective regional competition framework and consumer protection culture. The competition framework agreement compels adoption of competition laws by the members. In this regard, Ethiopia adopted a national competition law.

Although the competition regulation of COMESA, argued that regional integration contributes to improve production and distribution or promoting technical economic progress in allowing Ethiopian consumers a fair share of the resulting benefit, Ethiopia's participation in regional economic integration of concrete results from COMESA has so far been very little, which emanates from weak involvement in the business, weak industrial structure, government's heavy dependence on tariff revenue, and the uneven distribution of cost and benefit of the COMESA integration arising from economic differences among member countries.

According to the COMESA FTA treaty, customs duties on the list of category of goods selected were supposed to be reduced by 25 percent every two years. However, this treaty has been ineffective in Ethiopia yet, due to the above-mentioned conditions. Further, the Ethiopian consumers and business community lack awareness on the advantage and disadvantage of joining the FTA.

Due to the above-mentioned facts, Ethiopia is not a member of the FTA (in which it is among the 11 member states that are at different stages of preparation of tariff reduction to join the FTA) and has only done a 10 percent tariff reduction on goods imported from COMESA member countries, because of the fear of government revenue losses, potential damage to the country's weak industrial structure and low competition in domestic and international marketplaces.

Although, it is difficult to predict the negative impact of joining the FTA, Ethiopia calculated its negative effect on government revenue loss from import-export

trade deficit perspectives. Ethiopia's participation in regional economic integration visibility is minimal.

In summary, Ethiopia is exporting less and importing more from the COMESA, and is not utilising the institution. As such, the Ethiopian business community is largely unaware of the regional trading opportunities that discouraged the country to adopt and implement the treaty of COMESA. By themselves, treaties and protocols do not bring about regional trade expansion, but also require the dynamic participation of the business community, government commitment, and willingness to adopt and implement the competition treaty of COMESA for the benefit of the Ethiopian economy. Hence, it would be essential to create awareness on the advantage and disadvantage of framing national competition law to the society at large.

In Ethiopia, although, there has been little structural transformation, the trade balance dominated by import of finished commodities than export of primary commodities. Ethiopia, as a member of COMESA, its economy with small domestic markets, non-diversified production basis, underdeveloped infrastructure and inadequately skilled human capital, financial constraints, etc. gives only little chance of competing regionally and globally.

In order to have efficient competition within the business community and member countries in COMESA, there is a need to attract new players in the market with existing or new commodities and products by regulating the existence of monopolies and oligopolies in the market. This arrangement helps to form large scale of operation that leads to lowering prices that may benefit consumers.

To secure a competitive marketplace and thus protect the consumer from unfair, anticompetitive practices, the state intervention in policy and law area is crucial. For this, Trade Practices Investigation Commission should be strengthened institutionally, in human and material resources. The proclamation needs to be revised as to the standard of other similar African countries. Also to carry out actively the day-to-day activity of the Commission, full-time manager should be in place. Ethiopian Trade Practices Investigation Commission needs developmental support from COMESA member countries of the developing would in experience of implementing competition regimes.

Consumer Protection Law

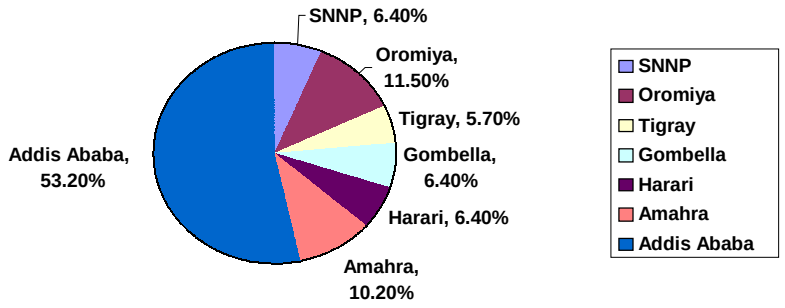
Ethiopia does not have consumer protection law in a consolidated form. This does not mean that there is no consumer-related legislation at all. It is possible to consider Consumer Protection Laws in Ethiopia as a conglomerate of various legal rules that are found being scattered in the various branches such as: civil, commercial, penal laws and other sectoral issue and specific legislations.

These laws have practical application almost on daily basis to protect the interests of consumers from any form of abuse. Lack of consolidation of these laws for the specific interest of the consumers have created a confusion on the very existence of the law itself. Also, for further analysis of its interface with the competition regime, lack of data and the problem of naming of court files under the title of competition cases make it almost impossible to deal with its interface with the competition regime.

Perspectives on Competition

To conduct primary research on Competition Policy and Law, a total number of 200 questionnaires were distributed to six National Regional State towns Adama, Awassa, Bahir Dar, Gondar, Gambella, Harar and Mekale and two chartered towns Addis Ababa and Diredawa.

Figure 3.1: Profile of Respondents by Region



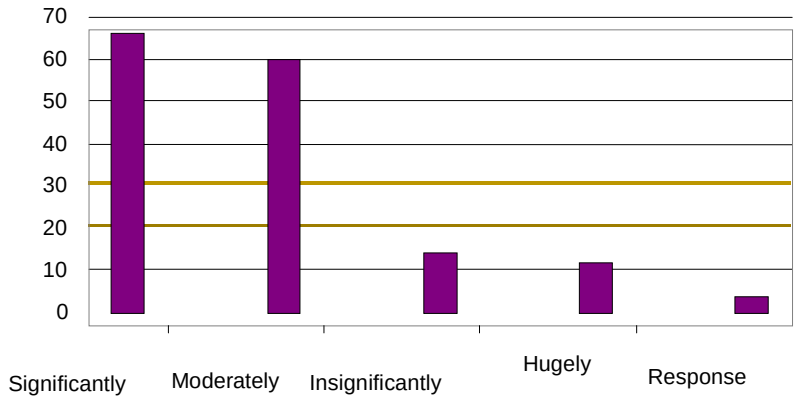
Profile of Respondents

According to the field survey data analysis, 21.8 percent of respondents knew the existence of rules, regulations or laws to check anticompetitive practices. 20.6 percent of the respondents marked "Yes" for the capability of existing rules, regulations and laws to check anticompetitive practices. Therefore, there is a need for empowerment of trade practice commission to create nationwide public awareness on anticompetitive practices as confirmed by 74.4 percent of the respondents. 85.3 percent of the respondents suggested that the objective of the law should focus on economic efficiency and consumer welfare. About 65.5 percent of the respondents said that the law should cover all types of enterprises, persons and all areas of commercial activities.

For the purpose of implementation of the law 63.0 percent of respondents advocated for the establishment of autonomous competition authority (CA) in Ethiopia; 42.2 percent suggested for both

investigation and adjudicative competition authority; and 37.1 percent proposed investigative CA, but adjudicative power should be vested to the courts. With regard to the power of CA, 91.4 percent of the respondents marked "Yes" for the question whether CA should deal with unfair trade practices and consumer protection issues. 82.1 percent of respondents underlined for the involvement of different stakeholders in CA functions, especially in the area of advocacy and publicity.

Figure 3.2: The Level of Awareness on Prevalence of Anticompetitive Practices in Ethiopia



In relation to the questions that deal with specialised regulatory sectors such as: Electricity, Telecommunications, Drug Administration and Control, etc; 33(28.4 percent) of the respondents entrusted overall power to CA, while 38(32.8 percent) agreed CA as a coordinating institution.

123 (78.8 percent) respondents marked "yes" for the existence of state monopolies in Ethiopia; 15 (9.6percent) "no"; 12 (7.7 percent) said "cannot say/ do not know" and 6 (3.9 percent) no response. 94 (60.3 percent) respondents marked "yes" for the indulgence of state-owned monopolies in anticompetitive practices, 18 (11.5 percent) "no"; 30 (19.2 percent) said "cannot say/do not know" and 14 (9.0 percent) no response.

Major state-owned/private enterprises in Ethiopia that have indulged in anticompetitive practices are: ETC, EEPCo, Agro-Industries, National Bank of Ethiopia, Housing Agency, Sugar Factories, Cement factories, Media, Agricultural Inputs Supply Enterprises, Party affiliated, Ethiopian Airlines, Addis Ababa Water & Sewerage Authority, City Bus and Postal services.

When any anticompetitive practice encountered 32.1 percent of the respondents marked for "would do nothing"; 26.9 percent marked for "to seek help from Consumer Organisation". 24 (15.4 percent) seek help from judiciary 22 (14.1 percent) seek help from Police; 18 (11.5 percent) seek help from Local Councils.

In a nutshell, out of 156 respondents, 116 (74.4 percent) marked "yes" for the need of enactment of comprehensive law to check anticompetitive practices, 12 (7.7 percent) "no", 13 (8.3 percent) said "cannot say/do not know" and 15 (9.6 percent) no response. Recently, the riters of this CRP have realised that the

Figure 3.3: Profile of Respondents

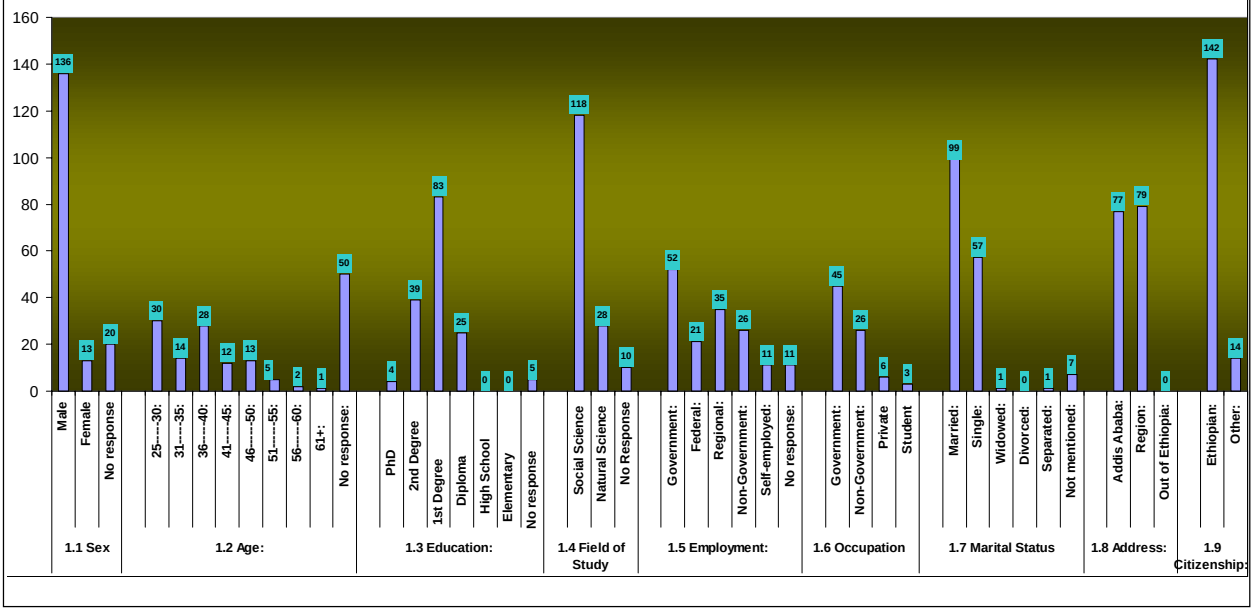
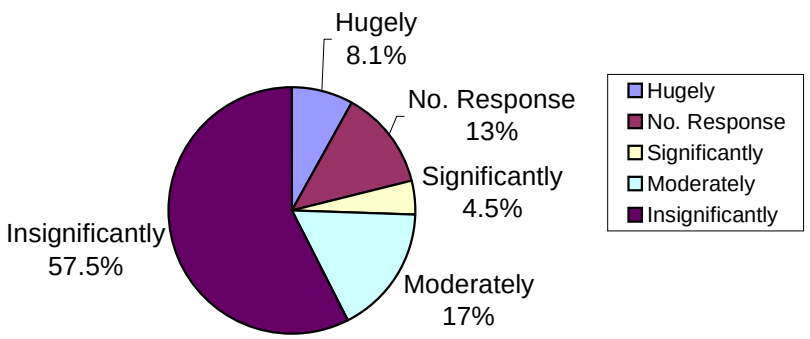


Figure 3.4: Responses for the Question Regarding how Consumers are Affected by Anticompetitive Practices



Government has endorsed "unfair trade practice proclamation", which has been said to be equivalent to the competition law.

Finally, the respondents gave their comments that may help to improve the level of competition in the Ethiopian market as follows:

- joint judiciary action by government and consumer protection associations;
- awareness creation on the notion of free market verses competition policy and law;
- strengthened government measure towards enabling environment;
- establish AHa ECoPA branch offices in all regional governments;
- enforcement of effective consumer protection law;
- avoid party affiliated, involvement in business; and
- consider political, economic, social and cultural situation of the society while implementing the proclamation.

Conclusion

The study indicates that consumers are severely affected due to the absence of competition policy and gross absence of awareness about the benefit of competitive market. Competition policy and legislation can significantly contribute to the integration of the country into the global market and help reduce poverty. The primary goal of competition policy should be to drive competitiveness and efficiency, which ultimately leads to better consumer welfare in accordance to economic principles. The regulation of a free market economy cannot be completed without effective and efficient competition policy and legislation, which ensures free and fair competition in the market.

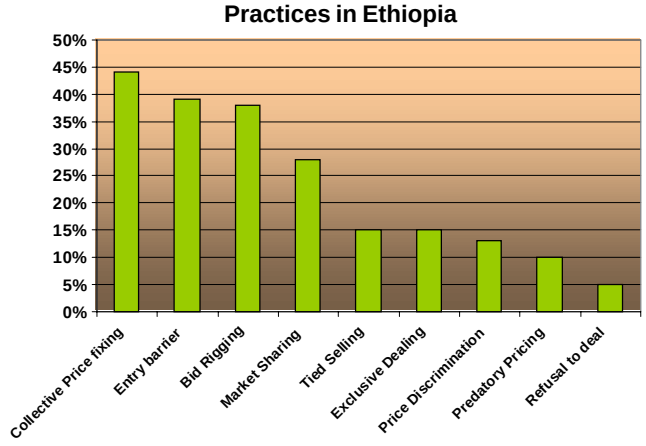
As a result of the culture of monopolies in the economy, the efforts to integrate into the global market cannot succeed, as local enterprises cannot participate effectively in the economy. The survey and research indicate that UTPs, collective price fixing, entry barriers and bid rigging are the most vprevalent anticompetitive practices in Ethiopia. These practices would need to be addressed by the Trade Practice Proclamation 239/2003 to be implemented by the Trade Practice Investigatin Commission in Ethiopia.

It has been argued that it is only in a country where there is economic development that domestic enterprises can be integrated into the global economy or market. Besides, it is through free and fair competition that weak and poor are allowed to participate effectively in their economy and take part in reducing poverty. To allow the weak and the poor to participate and play crucial role effectively in the economy or market, there must be an effective competition policy and legislation that protects and prevents consumers from exploitation.

Therefore, the writers of this country research report recommend that the government, business and consumers have to advocate and promote trade practice proclamation 329/2003, through awareness creation mechanisms. As stated above, consumers are victims of anticompetitive practices such as: horizontal agreements, abuse of dominance position, unfair trade practices, collective price fixing, entry barriers and bid-rigging. Hence, consumers have to build pressure for the effective implementation of the trade practice proclamation.

Considering that effective trade liberalisation policies should protect the weak and the poor through trade policies, enterprises operating in the economy/market have to promote economic development so as to reduce poverty.

Figure 3.5: Most Prevalent Anticompetitive Practices in Ethiopia



It has been realised that most monopolistic enterprises are prevalent in the market of essential commodities and services like sugar, cement, electricity, water, soft drink and air transport etc. As a result of this, the choice and access of many people for basic necessities is affected leading to the escalation of poverty and low levels of food security. Hence, the AHa Ethiopian Consumer Protection Association (AHaECoPA) has endeavoured to undertake a nationwide awareness creation programme on the advantage of competition policy and law in collaboration with the trade practice investigation commission.

Recognising the importance of consumer rights to equality, social justice, and economic advantage, the government has to seriously work on the area of competition law with enthusiasm to protect ethiopian consumers (most of who are poor) from anticompetitive practices.

In addition, this report recommends capacity building of the trade practice investigation commission in terms of human and material resources to advocate and promote trade practice proclamation and promote competition in the market.

Improving communication between trade practices investigation commission, sector regulators and stakeholders; improving the ability of the judiciary to support the commission; upgrading skills of case handlers for effective enforcement; conducting policy research and analysis and holding nationwide awareness creation workshops, panel discussions, an training are some recommendations stemming from this study, which would be crucial for strengthening the competition regime in Ethiopia.

Note: This chapter has been researched and written by Abebe Asamre, Gebremedhine Birega and Seifu Ali of AHa Ethiopian Consumer Protection Association (AHaECoPA), Ethiopia. The authors acknowledge the comments received from the members of the Project Advisory Committee. Comments and suggestions on the structure and content of this paper were received from Nitya Nanda of CUTS C-CIER and incorporated appropriately.

Chapter 4

Competition Scenario in Malawi

Introduction

Poverty-reduction growth requires healthy private sector competition between firms among other requirements. To enable consumers' access to high quality goods at lowest possible prices, there is need for a competitive market that allows the entry of new firms, allows good firms to thrive, and also that sub-standard firms fail and exit. Competition forces producers of goods and services to be efficient and to produce goods and services that consumers need, at the lowest possible prices.

While competition can lead to innovation and more efficient use of resources, it can also lead to the emergence of anticompetitive practices if firms are not ready for competition. They can form cartels or collude. In some cases, they form associations under the guise of developing the sector. These end up whittling down competition through market sharing or price-fixing.

Effective competition can also be undermined by Government legislation, regulation, and administrative procedures or requirements. These can be used to limit competition by actually barring entry or raising the cost of market entry. In some cases, well-meaning economic reforms in the form of trade liberalisation and privatisation can reduce competition, if not accompanied by appropriate competition and consumer protection policies and legislation.

Cartel-like behaviour amongst buyers of goods and services can also hurt poor producers. Employers in certain sectors can gang up and fix wages. Wage labour, in such cases, loses out as it pays below the market price of their services. Likewise, buyers of farm produce can collude and determine produce prices. Farmers are forced to accept low prices for their produce due to little or no bargaining power, given absent or limited markets for their produce.

Lack of competition generates direct and significant costs to the economy as a whole and to consumers, entrepreneurs, workers and recipients of government services. The poor are harmed the most, because of their constrained household options and budgets. In economies marked by lack of competition, be it due to the economic structure or poverty or both, an active promotion of competition and consumer protection is required. While trade and industry and other related policies address some aspects of the problem, explicit competition policy and law are required to address the problem squarely. Explicit competition policy and law preserve and promote competition for efficient allocation of resources, best possible choice of quality, lowest prices and adequate supplies to consumers. Consumer protection policy and law ensures that consumers have remedies against firms who misuse their dominant position, monopolies who skim the highest possible profits and suppliers who may be forced to cheat so as to beat competition. Private sector led poverty reduction requires, both effective competition policy and law as well as consumer protection policy and law, because profit maximising is rarely poverty reducing.

Malawi used to have a private sector-led poverty reduction strategy. It is currently developing another private sector-led poverty reduction strategy. Again, Malawi has competition policy and law as well as consumer protection policy and law. Malawi has a policy that covers both competition and consumer protection. Malawi has laws in its statutes that address both competition and consumer protection. These have been in place for at least three years. Whether these have been effective in addressing the competition and consumer protection problems is the subject of this study.

This study is part of a regional Project being executed in Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia and Uganda in response to a need by various stakeholders to take up activities that would ensure a level-playing field for competition and economic development in the country. The felt need came in the wake of trade liberalisation, deregulation and privatisation on the one hand and regional integration on the other.

The major objective of the study is to build capacity in select countries and assist them in formulating, implementing and/or enforcing competition policy

and law at the national and regional levels, through the engagement of multiple stakeholders by first supporting a situation analysis study and then using the results of the study to catalyse discussion and debate among stakeholders on ways of addressing specific competition related concerns. This Report is meant to stimulate the discussions and debate in Malawi.

This Report has benefited from a preliminary country report which was presented to the first National Reference Group (NRG) and comments on the report from that meeting as well as regional peer group members and CUTS itself. The Report has also benefited from the only study done on competition in Malawi entitled, 'Why is a Competition Law Necessary in Malawi' by CUTS and Consumer Association of Malawi (CAMA). It has also used findings of a desk study conducted by Steve Dunga and Betchani Tchereni, trade officers in the Ministry of Trade and Private Sector Development (MTPSD). Of those that responded, 52 percent were from Lilongwe. Further, 68 percent were respondents in entities that have first hand information on anticompetitive practices in terms of practising them or being directly affected by the anticompetitive practices of fellow players. There was no respondent from the agriculture sector/rural areas, mainly because the survey was urban based. Table 4 presents the distribution of the respondents by each sector. The responses from these are considered to represent the views of stakeholders.

The Report has seven sections excluding this introduction. It starts by presenting a brief general background of Malawi. The background is followed by a presentation of the socio-economic policies that have some bearing on competition. Following, are legal and institutional frameworks governing competition and consumer protection. An analysis of the market in terms of structure, levels of competition, competitiveness of firms, entry barriers and market concentration follows. The section incorporates findings from the questionnaire and also discusses competition and regulation regimes in the select sectors. Some analysis of the privatisation programme and how it has impacted on competition follows the section on nature of markets. The Report discusses regional integration before concluding.

Country Profile

Malawi is a small country covering 119,140 square kilometres, 20 percent of which comprises lakes and rivers. It occupies the southern part of the East African Rift Valley and is surrounded by Mozambique, Zambia, and Tanzania. The topography is immensely varied, from the Rift Valley floor at almost sea level to mountains rising to 3,000 metres. Most of the land is under smallholdings; maize being the main staple crop, and tobacco the main cash crop. Other common food crops include cassava, rice and groundnuts. Specially grown cash crops include tea, coffee and sugar. Lake fisheries are an important source of protein.

In 2005, the total estimated population was 12 million and total fertility rate was 6.1. The population is young; 44 percent is below 15 years, 54 percent is below 20 years and only eight percent is over 64 years. The national population density is high, averaging 104 persons per square kilometre but ranges between 86 persons and 200 persons. Close to 90 percent of the population is rural-based where it has access to customary land for their settlement and farming. Roughly 12 percent of the labour force is employed in the formal sector, 46 percent of which are in agriculture and fishing, 15 percent in manufacturing, 14 percent in community and personal services. Of those in formal employment, some 20 percent work in the public sector.

Table 4.1: Distribution of Respondents by Sector

Sector	Number	Percent
Professional services	14	28
Distribution	11	22
Manufacturing	7	14
Financial services	6	12
All other services	4	8
Transport	3	6
Utilities	2	4
Communications	2	4
Construction	1	2
Total	**50**	**100**

Malawi became a British Protectorate in 1891, politically independent in 1964, and a republic in 1966. The central government dominates public administration but the traditional leadership plays a vital link between public administrators and communities. The local government is very weak despite a strong drive to decentralise. From 1964 to 1994, Malawi was practically under one-party rule whose president was given absolute powers in 1971. Following a referendum in 1993, the country adopted a multi-party system of government and this was followed by general elections in May 1994. A democratically elected government with a multi-party parliament followed the elections. So far, there have been three presidential and parliamentary multi-party elections in 1994, 1999, and 2004. There has been one multi-party local government election in 2000 and after the elected councillors mandate run out in 2004, government dissolved the local assemblies in 2005 thereby making local assemblies run as central government entities.

By 1995, a new republican constitution was adopted granting the internationally recognised bill of rights and separation of powers among the three organs of the state; the executive, the legislature and the judiciary. Administration of justice is done under traditional leadership, High Court and the Supreme Court of Appeal. An industrial relations court, with original jurisdiction over labour disputes and such issues relating to employment, is provided for and was established in 1999. Other constitutional bodies provided for and in operation include the Human Rights Commission, Law Commission, Anti-Corruption Bureau and the Office of the Ombudsman.

Table 4.2: Socio-economic Indicators

Indicator	Value	Year
GDP Per Capita (US$)	166	2001
Population in millions	11.6	2001
Population below poverty line (%)	65.3	1998
Adult literacy (%)	61	2001
Male	75	2001
Female	48	2001
Primary NER (%)	101	2000-01
Life Expectancy at birth (years)	38.5	2001
Population expected to live up to 40 years (% of cohort)	41.4	2000-5
Population with access to essential drugs (%)	44	1999
Population with access to safe water (%)	57	2000
Population with access to sanitation facilities (%)	76	2000
Proportion of under-five children stunted (%)	49	1995-2001
Infant mortality rate (number per 1,000 live births)	114	2001
Under-5 mortality rate (number per 1,000 live births)	183	2001
Maternal mortality rate (number per 100,000 live births)	1100	1985-2001
HIV/AIDS prevalence rate (% of the 14-49 age group)	15	2001

Source: UNDP Human Development Report 2003

Socio-economic profile

Malawi is classified as a LDC. It is poor by both international and regional standards as evidenced by its socio-economic indicators. Table 4.2 with a per capita GDP of US$166 and HDI of 0.387 in 2001, Malawi has been ranked seventh and 14th from the bottom, respectively. It has high food insecurity, adult infant, child, and maternal mortality and HIV/AIDS prevalence in adults. The situation is likely to have worsened considering that the economic performance has not improved over the past four years. According to the latest economic report, the economy grew by an average of 1.3 percent since 2000 dragged down by the small-scale agriculture, which grew only in two of the five years and averaged 1.5 percent per annum over the same period.

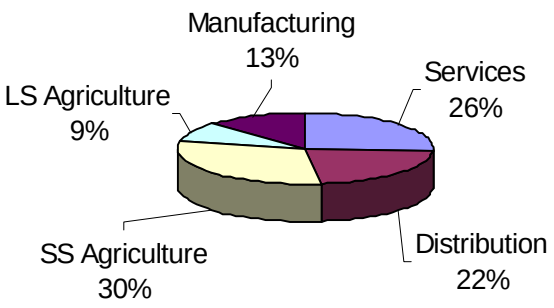
The country has a weak economic structure and requires a structural transformation if it is to support sustainable poverty reduction. The economy is still dominated by small scale and subsistence agriculture even after over two decades of SAPs[19]. Figure 4.1 the low and seasonal income available to the population implies a small market, and therefore limited scope for increased number of large-scale import substituting manufacturing companies. The size of the economy is suited for SMEs. This is why employment opportunities in the formal sector are very limited.

What is clear from this economic structure is that farmers, traders, and intermediaries dominate the private sector. There is likelihood that some manufacturing sub-sectors are dominated by monopolies or oligopolies, which limit the scope for competition. However, there is potential for competition in production and marketing, trading and possibly in associated services like transport and private services.

Selected Policies Affecting Competition

There are a number of government policies that have a bearing on competition in Malawi. Most of the policies have been developed under the movement of economic liberalisation. Malawi followed economic reforms that replaced controlled economic management with freed markets, open borders for goods and services, and non-protective tariffs. The speed of the reforms was quick and this mainly resulted in increased imports but limited investment in manufacturing. The influx of imports started to choke the inflexible manufacturing sector, as it failed to improve its efficiency speedily. With time and increased imports manufacturing firms started to reduce their production levels while others slowly died under the intense pressure from competition. This is evidenced by a drop in the

Figure 4.1: GDP Sectoral Shares 2000-2004



Source: MEPD, Economic Report (Various)

19 It is estimated that as many as 56 percent of the farming households are pure subsistence farmers; they produce for own consumption.

contribution of manufacturing in GDP from a high 18 percent in 1988 to an average of 13.3 percent for the 1991-1994 period to an average of 11.7 percent for the 2000-2004 period.

On the other hand, enterprises operating in non-competitive markets took advantage of consumers by charging exorbitant prices. Others operating in oligopolistic markets, opted to collude rather than compete. Both these practices disadvantaged the consumer. The Government made some efforts to protect the local industry from unfair competition and consumers from being unfairly taken advantage of by introducing some policies. As will be seen in the discussions of the major policies, not all of them were effective in promoting competition or protecting the consumer. Poor policy analysis and lack of implementation were the major reasons why the policies did not achieve their objectives.

Development Policy

There are currently two development policy documents that have some bearing on competition in Malawi. These include the Malawi Poverty Reduction Strategy (MPRS) and the Malawi Economic Growth Strategy (MEGS). The MPRS was launched in 2002 and deals casually with competition. It recognises the private sector as the driving force for growth with government, non-governmental organisations (NGOs) and donors as mere facilitators of the growth in terms of creating an enabling environment for pro-poor growth, supporting poor-friendly industries including micro, small, and medium enterprises (MSMEs).

Besides this, the MPRS states that the Government intends to broaden the industrial base by focusing on the development of export-oriented, high value-added and high technology industries; develop new and competitive industry clusters through integration of key industries, suppliers, supporting industries, critical supporting business services, requisite infrastructure and institutions; accelerate regional development, especially the Zambia-Malawi-Mozambique growth triangle; and integrate MSMEs into industrial development by strengthening their competitiveness through improved access to finance, markets, infrastructure, information, results of research and development and training, among other strategies. Had all of the above been achieved it could have, in all likelihood, impacted positively on competition. Unfortunately, the MPRS was not implemented as was expected.

According to the MPRS, competition was to be promoted in the micro-finance sector. The MPRS stated that the Government was to expand competition and efficiency in the credit market by commercialising and privatising all government-controlled micro-finance institutions (MFIs). As can be seen, competition was only confined to the MSMEs. The MPRS also did not mention promotion of competition among large-scale manufacturing enterprises.

Competition in the financial sector was meant to be increased by eliminating the interlocking ownership linkages between the two dominant commercial banks through full privatisation and encouraging new entrants into the system. Apart from competition, this was meant to expand coverage and innovative lending by financial institutions. The interlocking ownership was eliminated with the sale of Commercial Bank of Malawi. With the entry of a number of commercial banks, privatisation indeed brought in more competition into the financial sector than ever before.

The MPRS recognises that the reforms in the telecommunication sector (the separation of postal services from telecommunications and incorporating them as commercial statutory corporations) did not achieve the desired goal of facilitating growth and diversification. It, however, falls short of proposing measures to deal with the identified problem.

MEGS was a reaction to MPRS's apparent glossing over of the role of 'big business' in the much-needed pro-poor growth. MEGS dealt with competition issues more clearly. One of the strategies advocated was 'to create a competitive domestic market by developing and implementing competition, consumer protection and trade remedy policies with supporting legislation and regulations for each'. Related actions for this strategy were to:

- establish the Competition Commission, by July 2003;
- enact the Consumer Protection Law, by July 2003; and
- formulate a Trade Remedial Law, by July 2004.

MEGS was developed when the Malawi Competition Policy and its related legislation were already in place. That is why MEGS called for the establishment of the Commission provided for in the law. Again, consumer protection is covered by the competition policy, but the legislation on competition excluded consumer protection, hence the call for a consumer protection law. The second and third actions were combined in a law that provided for consumer protection and trade remedies with a consumer protection council as the vehicle for both. Some action has been taken towards the establishment of the competition commission. Members of the Commission were appointed in early 2005 but the commission's full-time secretariat is yet to be set up. None of these actions can, on their own, increase competition or protect consumers.

Industry and Trade Policy

The Integrated Trade and Industry Policy (ITIP) predates the MPRS and MEGS by over four years. Nonetheless, it covers competition and consumer protection, apart from almost all issues necessary for the development of trade and industry sectors. For example, it covers information base for policy-making, improved quality of infrastructure (transportation, utilities, industrial facilities), human resources development (training and labour relations), technology capability, trade and industry financing, competition policy, investment promotion, private sector development and collaboration with the private sector.

Under utilities, the policy earmarks two important monopolies for private sector participation. The ITIP states that the Government recognises the need to promote competition as a way of increasing efficiency of service delivery in telecommunications and advocates private sector participation in the provision of electricity. Consequently, encouragement of the private sector participation in telecommunications and in the provision of electricity is seen as one way of increasing competition in the utilities sector and indeed an important step in the promotion of both trade and industry.

The ITIP recognises that a non-competitive environment is one of the factors that hinders private sector development and acknowledges that a competition policy counters restrictive business and unfair trading practices. It argues that competition policy coupled with a good investment promotion policy creates an environment conducive for investment, which eventually leads to increased consumer welfare.

The ITIP supports the use of import procurement using multilateral trade agreements, preferential trade agreements and regional as well as bilateral trade arrangements where goods and services are procured at zero or reduced import tariffs in order to increase competition. The ITIP recognises that globalisation is both good and bad for competition. Globalisation could be bad if exporters into Malawi use unfair practices that are not detected and dealt with, in Malawi. The ITIP also recognises the challenges posed to the economy by the fast growing informal cross-border trade. While appreciating the significant impact that trade makes on the domestic market in terms of providing goods at affordable prices, the ITIP recognises that unfair foreign trade squeezes the market of locally manufactured goods. The policy, therefore, advocates the use of countervailing duties and anti-dumping measures and safeguards to protect domestic manufacturers, producers and traders.

In industry, the policy reports of high concentration levels of ownership and states that this has some negative impact on competition. Companies belonging to the same owners are not bound to compete with each other, but to collude. Finally, the ITIP recognises that the government has already taken some action meant to encourage the SMEs sector. These include the establishment and operationalisation of the Government Preferential Purchase Programme. As will be seen, this has been legislated in the Public Procurement Act. The Government has also established an SME Fund and formulated the SME policy.

Investment Policy

Malawi's investment promotion polices and legislation were developed and adopted in the early 1990s. By 1992, the Malawi Investment Promotion Agency was set up and operational. It was set up to implement the policy and law. The policy and law were designed to attract foreign as well as domestic investment by offering fiscal as well as administrative incentives. The fiscal incentives were even more generous for those producing to export. As already indicated, the availability of more players in the industry breeds competition that turns to be beneficial for, specifically, consumers and to the economy, in general. The slow progress in addressing business registration administrative procedures and allegations of corruption, on top of the barriers posed by the country's land-lockedness, saw this policy achieving very little in terms of fostering competition. The ITIP proposes that the policy and law be revised to reflect the current situation.

Government Procurement Policy

There is no black and white government procurement policy *per se*. What is available is public procurement legislation with its regulations. The Public Procurement Act presents the principles and objectives of public procurement while the regulations provide the implementation details. The goal of the public procurement legislation is to achieve maximum value for public money. Since the government (central, local, parastatal, parliament and judiciary) is the single-most purchaser of goods and services in the country, it has the biggest potential of fostering competition among its suppliers of goods and services. The legislation's defining principle is the procurement of goods and services by tendering. Unless dictated by circumstances, three competitive bids are required. It prohibits fraudulent practices, like bid-rigging that may deprive the government from enjoying the benefits of free and open competition.

The legislation uses thresholds to determine the tendering processes required. The Director of Public Procurement is empowered to procure goods and services beyond a certain threshold. The law prohibits

artificial dividing of procurement in order to have procurement lots valued at below the threshold. The legislation provides very few exceptions to the rule of three competitive bidders. Apart from the few exceptions, the legislation provides for the promotion of local suppliers. Section 28 states that:

"(1) It is the policy of the Government to provide maximum opportunities for small- and medium-sized enterprises to participate as suppliers, contractors, consultants and subcontractors in public procurement.

(2) Heads of procuring entities are responsible for effectively implementing the small and medium-sized enterprise promotion programme within their activities, … and take all reasonable action to increase participation in procurement by those enterprises".

The public procurement legislation, which is a translation of public procurement policy, written or otherwise, promotes competition in the country and ensures efficient utilisation of public resources. It is only the preferential treatment given to local suppliers that may, at times, turn out to be an un-competitive practice if there is no competition among the local suppliers or if their bids are consistently higher than the open and fair bids.

Labour Policy

There is no written labour policy in Malawi. There are, however, pieces of legislation that are considered to be a translation of unwritten labour policy. In relation to competition, the labour legislation provides for open employment, where vacant positions are advertised. Employees are also allowed to bargain for their terms and conditions of employment collectively as trade or institution-specific workers union members. For foreign investors, they are allowed to employ a certain category and number of employees from outside the country. The ITIP encourages employers to train their employees to improve efficiency.

MSEs Policy

MSEs Policy was promulgated to address potential as well as the actual obstacles MSEs face in areas of fiscal policy and regulation; money and banking; trade and industry policy and regulations; quality and standards; registration and licensing; management of their records; and access to raw materials, markets, information and technology. The proliferation of successful MSEs is good for competition and eventually, consumer welfare. MSEs also face competition from medium and large enterprises. That is why these enterprises also require Government assistance through affirmative Government procurement programmes. This policy, read together with the ITIP and the Public Procurement Act gives the impression that the Government Procurement Scheme for MSEs is operational for those duly registered.

Co-operatives Policy

The co-operative sector is not a significant player in the private sector. However, it is a potential contributor to competition and consumer protection. Co-operatives are known to establish wholesale and retail shops which offer goods to its members and the general public at competitive prices. Co-operatives can also play an important role in mitigating private-sector-growth constrains like capital, credit facilities and technical skills by pooling resources together, apart from increasing bargaining power when dealing with other players in the market. The co-operatives policy was designed to enhance participation of the poor in the socio-economic development process through co-operatives and to encourage co-operatives to diversify their investments in all sectors of the economy, especially industrial co-operatives that are expected to contribute towards the goal of broadening the country's industrial base. This is what was picked by the MPRS. In other words, most of the ideals of the co-operatives policy were picked up by the MPRS. It is unfortunate that the policy was not implemented.

Micro-finance Policy

The micro-finance policy was developed with the aim of supporting enterprises that have problems in accessing credit in the formal financial market. These are mainly the MSEs, co-operatives and, in some cases, medium scale enterprises. Although the micro-finance policy does not relate to competition or consumer protection directly, it fosters competition through its funding of healthy cooperatives and MSEs. Flourishing MSEs and cooperatives imply increased competition, and therefore improved consumer welfare. As long as micro-finance achieves its objectives, the probability of promoting competition is high.

Competition and Consumer Policies

The competition policy for Malawi was approved in 1997. Its broad policy objective is to promote economic efficiency and protect consumers' interests. It has three broad strategies: namely lowering barriers to entry; reducing restrictive business practices; and protecting the consumer. According to the policy, there are four focus areas: un-competitive business behaviour (fixing, collusive tendering or customer allocation, and tied sales) aimed at eliminating or reducing competition; unfair business practices aimed at taking unfair advantage of consumers; market structures that permit abuse by a dominant enterprise; and government legislation that affect the freedom in the market.

Examples of unfair business practices cited in the policy include:

- hoarding of producer and consumer goods for the purpose of bringing about a price increase;
- misleading the public as to the nature, price availability, characteristics, suitability for a given purpose, or quantity or quality of any product or service; and
- supplying any product which is liable to cause injury to health or physical harm to consumers when properly used, or which does not comply with consumer safety standards

The policy calls for the enactment of a law that would make unfair business behaviour an offence and protects the consumer from the manufacturer or importer offering defective or sub-standard products or services by making them liable. It also calls for the establishment of a trade remedies system where civil and criminal suits could be dealt with, for the purpose of recovery of damages suffered consequent to un-competitive or restrictive business practices. Specifically, the policy calls for the:

- creation of an autonomous competition commission whose role will be to administer restrictive business practices legislation and consumer protection legislation; and
- establishment of a specialised tribunal to resolve contentious issues in certain specific fields subject to judicial review on matters of law.

The Government did indeed enact laws that provided for the promotion of competition and protection of the consumer. It also provided for institutions that would make the law take effect. These are the subjects of discussion in the subsequent section.

Legal and Institutional Frameworks

4.1 Legal Framework for Competition

The Competition and Fair Trading Act (CFTA), which was assented to by the President, on December 30, 1998 and gazetted on December 31, 1998, was developed immediately after Cabinet approval of the Malawi Competition Policy in 1997.

Evolution and Foundation of and Philosophy behind the Competition Law[20]

Before the liberalisation era, the power of dominant firms, monopolies and oligopolies were kept in check by extensive price controls and other Government policies. With economic liberalisation, the government left the markets free to set prices to enhance efficiency and competitiveness. As the economy continued to move progressively towards increased liberalisation, certain undesirable but basic business practices cropped up taking advantage of the 'hands-off' approach at the expense of both economic efficiency and consumer welfare– targets of economic liberalisation. Typically undesirable and consumer-welfare-reducing business practises that took advantage of the liberalisation, included price-fixing, tied-sales, speculative hoarding, market sharing and collusive tendering. Anticompetitive Practices included temporary under-pricing to fend off competition; seeking import protection against competing imports; buying up competitor enterprises; and unfair advertisements against new entrants' products.

This situation required the Government to take up its facilitative role of creating an enabling environment for fair competition. The philosophy was not to condemn or penalise those industries in Malawi that had large shares of the market but to ensure that consumers were adequately protected from exploitative pricing or collusion that was designed to prevent competition. Further, the Government realised that economic liberalisation, even if given a long time, would not produce perfect markets. The existence of monopolies (natural and otherwise) and oligopolies required the Government to put protective mechanisms for potential competitors (attracted by abnormal profits) and consumers (who are exposed to the dominant firm). The ongoing privatisation programme has also resulted and may also result in some public sector monopolies being divested into private ownership with an attendant risk of abuse of dominant market power. Hence, the competition law was considered a good platform to address most of these real problems.

Objectives, Scope and Coverage

The objectives of the competition law are clearly spelt out in its preamble. Quoting directly, the Act is 'to encourage competition in the economy by prohibiting anticompetitive trade practices; to establish the Competition and Fair Trading Commission; 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; to facilitate the expansion of the base of entrepreneurship and to provide for matters incidental thereto or connected therewith'.

The CFTA dwells much on institutional issues related to the Competition and Fair Trading Commission. It provides for the establishment of the Commission including its Secretariat, its operations, funding, as well as its management and accountability. It also details

20 The history, evolution and philosophy behind the competition law are found in the background of the Malawi Competition Policy. What is presented here is only a summary.

areas as well as anticompetitive trade practices that the Commission would be concerned and deal with.

The CFTA prohibits all anticompetitive trade practices defined as: 'any category of agreements, decisions, and concerted practices which are likely to result in the prevention, restriction, or discretion of competition to an appreciable extent in Malawi or in any substantial part of it'.

CFTA does not deal adequately with dumping (cross-border abuses) and unfair competition posed by informal traders[21]. Informal traders need to be dealt with because of mushrooming informal trading signals. As such, there is a malfunctioning of formal trading systems. This is possibly due to high import duties imposed on formal traders, which give rise to appreciably high cross-border price differentials, which in turn, are exploited by informal traders using various methods, including tax evasion or import under-valuation. Further, CFTA does not have extra-territorial jurisdiction and is linked to any agreement or arrangement, be it bilateral, regional, or multilateral. Furthermore, the CFTA does not relate itself to any legislation that would deal with consumer protection despite the fact that competition and consumer protection are related, as demonstrated by their being under one policy and consumer protection being one of the objectives of the CFTA[22].

Anticompetitive Practices

CFTA lists the following as anticompetitive practices:

- predatory behaviour towards competitors including the use of cost pricing to damage, hinder or eliminate competition;
- discriminatory pricing and discrimination, in terms and conditions, in the supply or purchase of goods and services, including by means of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises;
- making the supply of particular goods and services dependent upon the acceptance of restrictions or manufacture of competing or other goods or the provision of competing or other services;
- making the supply of particular goods and services dependent upon the purchase of other goods or services from the supplier to the consignee;
- imposing restrictions where or to whom or in what form or quantities goods supplied or other goods may be sold or exported;
- resale price maintenance; and
- trade agreements fixing prices between persons engaged in the business of selling goods and services, which agreements hinder or prevent the sale or supply or purchase of goods and services between persons, or limit or restrict the terms and conditions of sale or supply or purchase between persons engaged in the sale of purchased goods or services.

Regarding trade agreements (collusions), the CFTA prohibits the following practices:

- colluding in the case of monopolies of two or more manufacturers, wholesalers, retailers, contractors or suppliers of services, in setting uniform prices in order to eliminate competition;
- collusive tendering and bid-rigging
- market or customer allocation agreements;
- allocation by quota as to sales and production;
- collective action to enforce arrangements;
- concerted refusals to supply goods or services to potential purchasers; or
- collective denials of access to an arrangement or association that is crucial to competition.

Prohibited Unfair Trading Practices

The Act prohibits hoarding and other acts that are meant to bring about price increase. The Act also prohibits misleading advertisements, the sale of goods and services using false information, the sale of unsafe or sub-standard products that can cause injury to health or physical harm. It also prohibits pyramid and bait selling, conduct of promotion competitions with no intention to give the prizes and claim of payment for unsolicited gifts.

Other prohibited UTPs related to supply of goods and services include:

- making any warranty limited to a particular geographic area or sales point;
- falsely representing that products are of a particular style, model or origin;
- falsely representing that goods are of a particular age; or
- representing that products or services have any sponsorship, approval, performance and quality characteristics, components, materials, accessories, uses or benefits which they do not have.

Control of Trade Associations

Trade associations are also known to propagate anticompetitive practices and CFTA prohibits such practices. These include exclusion of potential members and recommendations of prices and related terms to its members or affiliates. In other words, the Act requires that association members charge freely without being influenced by the association. Typical

21 Formal traders sometimes purchase from informal traders to avoid paying custom duties.

22 It is possible that this relationship was deliberately left out because it was known that Government would enact a law on consumer protection. However, the link needed to be provided for the CFTA.

examples of such prohibited practices are goods and public transport related associations (internal freight transport operators, minibuses, taxis).

Control of M&As

The Act prohibits mergers and acquisitions (M&As) or takeovers that are likely to result in substantial lessening of competition in any market. The competition authority is mandated to scrutinise any intended merger or acquisition such that no merger or acquisition can legally be affected without its express approval.

Control of Dominant Market Players

The Act makes it an offence for any market player with a dominant position to eliminate or damage a competitor, prevent entry or deter or prevent competitors from operating in the market. The Act empowers the Commission to continuously monitor and objectively assess dominant players to ensure that they to do not limit competition in the market.

Legal Framework for Consumer Protection[23]

The Consumer Protection Act (CPA) is the legal framework for consumer protection. Apart from providing for the establishment of the Consumer Protection Council – a subject for the next section – the Act provides for channels that consumers can use for trade remedies arising from unfair trading practices. Above all, the Act provides for consumer rights with the following entitlements:

- protection of their economic, health and safety;
- consumer education;
- fair and non-discriminatory treatment;
- compensation for damages;
- freedom and right to join consumer associations or unions; and
- competent protection of their consumer rights, among others.

The Government is obligated to provide the competent protection while suppliers and trader are obligated to offer safe, appropriate, and quality products. They are also required to produce business licences on request, refrain from indulging in unfair trading practices and co-operate with authorities in protecting the consumer. A fine of half a million *Kwacha* is stipulated for those convicted of unfair trading practices. Consumers are also obligated to take precautionary measures including acquiring consumer education.

The Act prohibits pyramid selling or baiting and also nullifies any contract that implicitly abuses consumer rights[24]. Where contracts are required, the Act requires suppliers and traders to furnish the contract before the purchase and should be presented in simple readable official language, and where the contract is to be entered locally, the same should be translated into local language, explained to an illiterate, blind, mute, and any similarly physically challenged consumer in a language s/he understands. The Act mandates the Council to regulate standard form agreements and cancel or alter a contract if it disadvantages a consumer.[25]

Going through the Act, it is clear that consumer rights are well covered such that if implemented fully, there would be few cases of consumer abuses, especially if the consumer is well educated on issues relating to consumer protection. The hitherto powerful (traders and suppliers), who have for a long time taken advantage of the illiterate and seemingly powerless consumer, would not be excited to see the Act implemented to the letter. No wonder there is lot of dragging of heels in setting up competition and consumer protection bodies.

Institutional Set-up for Competition and Consumer Protection

The Competition and Fair Trading Commission is the institution provided for by the CFTA for the promotion of competition in Malawi. The Consumer Protection Council is the institution as under the Consumer Protection Act meant for the protection of the consumer from unfair and uncompetitive trading prices. Both the Commission and Council are corporate bodies with perpetual succession and a common seal and are capable of suing and to be likewise sued in their respective corporate names. While members of the Commission are nominated by the responsible minister and appointed by the President, the minister appoints the Council members. However, the minister is responsible for both bodies in terms of their remuneration and related matters and they both report to the minister. MTPSD is currently responsible for both competition and consumer protection and by implication, the Minister for MTPSD is in charge of the two bodies. The composition of these two bodies is similar in nature, although Council membership is more diverse. Some professions and civil society bodies are represented in both bodies and two ex-officio members are common in both bodies. The Council has a more diversified civil society representation than the Commission (refer table 4.3).

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23 The discussion is based on the Consumer Protection Bill of February 07, 2003. The Act was passed and assented to in the same year.
24 Section 8 subsection 3, provides a list of contractual clauses that are not allowable in buyer-seller contracts.
25 The Act stipulates what constitutes an unfair consumer contracts in section 27 sub-section 3.

Table 4.3: Composition of the Competition Commission and Consumer Protection Council	
1 One person representing business interests	A representative from Malawi Confederation of Chambers of Commerce and Industry
2 Another person representing business interests	A representative from the Law Society of Malawi
3 A lawyer	A representative from an economic body in Malawi
4 An economist	A representative from a trade union in Malawi
5 An accountant	A representative from a consumer body in Malawi
6 One person representing consumer interests	A representative from a Women's organisation
7 Another person representing consumer interests	***Ex-officio*** Secretary for Commerce and Industry or his representative
Ex-officio	Director General of Malawi Bureau of Standards or his designated representative
8 Secretary for Commerce and Industry or his representative	Chief Executive of the Pharmacy, Medicines and Poisons
9 General Manager of Malawi Bureau of Standards or his representative	Board or his designated representative
10 Secretary to the Treasury or his representative	Secretary for Justice or his designated representative
	Secretary for Local Government or his designated representative

Functions of the Competition Commission are to:

- carry out investigations in relation to the conduct of business so as to determine whether any enterprise is carrying on anticompetitive trade practices or unfair trading practices and the extent of such, if any;
- carry out investigations on its own initiative or at the request of any person who may be adversely affected by a proposed merger;
- take such action as it considers necessary or expedient to prevent or redress the creation of a merger or the abuse of a dominant position by an enterprise;
- provide persons engaged in business with information regarding their rights and duties under the CFTA;
- undertake studies and make available public reports regarding the operation of the CFTA;
- cooperate with and assist any association or body of persons to develop and promote the observance of standards of conduct for the purpose of ensuring compliance with the provisions of the CFTA; and
- advise the Minister on such matters relating to the operation of CFTA as it thinks fit or as may be requested by the Minister.

The Competition Commission has the powers to:

- summon and examine witnesses;
- call for and examine documents;
- administer oaths;
- require that any document submitted to the commission be verified by affidavit; and
- adjourn any investigation from time to time.

Functions of the Consumer Protection Council are to:

- investigate any complaint received regarding consumer protection, and where appropriate, refer the complaint to a competent authority and ensure that action is taken by the competent authority to whom the complaint has been referred;
- carry out investigations or inspections on its own initiative or at the request of any person regarding matters relating to consumer issues;
- identify price mechanisms in Malawi to determine whether the prices are justifiable;
- monitor the frequency and magnitude of price increases;
- liase and consult with relevant stakeholders in order to understand what is happening in the economy;

- coordinate and network consumer activities and liase with consumer associations and organisations, any competent authority and agencies within and outside Malawi to protect consumer interests;
- formulate and submit to the Minister, policy and legislative proposals in the interest of consumers, consider and examine, and where necessary, advise the Minister on the modification, consolidation or updating of legislation providing protection to consumers in the areas covered under, or related to the CPA or any other written laws;
- provide advice to consumers on their rights and responsibilities under the CPA and any other written law and make available to consumers general information affecting their interests;
- carry out, promote or participate in consumer education programmes and activities;
- regulate the operations of consumer organisations so that they operate in a transparent manner and effectively throughout the country;
- create or facilitate the establishment of conflict resolution mechanisms on consumer issues;
- advocate for the effective implementation of the CPA and any other written law affecting consumers;
- maintain a complaints register;
- disseminate consumer information to the public;
- collaborate with other institutions to ensure that the quality of technology, goods and services imported into the country comply with the Malawi standards; and
- recommend to Government, where appropriate, minimum standards for basic or essential needs.

The Consumer Protection Council has the powers to:
- request an advertiser to withdraw an advertisement which contravenes the provisions of the CPA;
- publish reports of the complaints the Council has dealt with; and
- caution suppliers or traders who contravene the provisions of the CPA.

Judging from the above, the Council is more of an advocacy than a trade remedies body. Its powers are limited compared to those of the Commission although it has a longer list of functions. While both can investigate, the level of investigations by the Council is limited in that it cannot summon witnesses and call for and examine documents. Its price monitoring role, especially the determination of whether prices are justifiable, will be limited if documents are not called for. The provision that the Council should refer its cases to a 'competent authority' mimics that of the original Anti-Corruption Bureau. The Council could end up being a barking but toothless bulldog similar to the original Anti-Corruption Bureau. All said and done, a barking dog is better than none whatsoever, because it acts as deterrent for a less determined robber.

What is important, though, is not whether this body would possibly just bark, but bite as well. With a legacy of dragging its heels on all fronts, the question is whether these bodies will be operational at all, since both 'barking' and 'biting' require some energy. As indicated above, legal frameworks establishing the Commission and Council were enacted some years ago. It was only in 2005 that the Government appointed the commissioners[26] and after one year, there is still no full-time Secretariat. The Government it is yet to fund the Commission to enable it set up a full time secretariat.[27] That said, the interim secretariat had, for the Commissioners, three mergers and acquisitions to be dealt with. One of them, the merger of Mobil Oil and Caltex Oil, has been stopped. This is encouraging enough, considering that the Commission has no full time secretariat.

If the seven years that the Government has taken to appoint the Commissioners and plan to fund it are taken as standard then the Council has a long way to go. The major problem cited by the Government is inadequate revenue to support all these 'important' institutions. The truth of the matter is that resources are never adequate – it is the priorities that matter. Though positive, economic liberalisation, privatisation, regional integration and globalisation impact negatively on the consumerthese reforms were prioritised. By implication, priority was given to the manufacturer, supplier, trader, and entrepreneur. It is now time to prioritise the welfare of the consumer, who has been sidelined for many years. Without competition and consumer protection bodies, consumers' welfare will continue to be affected, negatively.

As can be seen, the Commission and Council resemble one another in terms of type, composition, and to some extent, functions. They differ markedly in their powers. Both are not yet operational, although there are now some moves to operationalise the Commission. Strangely, despite all similarities and the fact that the development of the policies and laws involved the same secretariat and stakeholders, the two Acts do

26 The names and affiliations of the non-ex-officio commissioners are Mr. Loyd Mahara of Limbe Leaf Tobacco Company (Chair), Ms Rose Mkandawire of Toyota Malawi, Ms Alice Konyani of BP Malawi, Mr. John Mhone of Unilever South East Africa, Mr. Percy Ligoya of Economics Association of Malawi, Mr. Collins Magalasi of Malawi Economic Justice Network and Ms Jane Pamdule of the Consumer Association of Malawi.

27 Although MTPSD indicated that the funding of the Commission was included in the ministry's budget estimates for the 2005/6 financial year, there is no sign of a funded Secretariat even after eight months of implementation. In fact, it seems that the setting up of the Secretariat in not in the cards this 2005/6 financial year.

not relate to each other, explicitly. Had the foundations of the two legislations been harmonious, then the establishment of one institution (to address competition and consumer issues) could have been an explored, instead of having two separate institutions that suffer from paucity of resources, and hence are ineffective.

Stakeholder Knowledge of Legal and Institutional Frameworks

Knowledge of the Legal Framework

According to the results of the fieldwork, few stakeholders know that the Government has already put rules and regulations to deal with anticompetitive practices. Asked whether there are any rules, regulations and laws to check anticompetitive practices, 26 percent said 'no' as 44 percent said 'don't know'. It should be recalled that this was eight years after the legislation was already formulated through what was considered a participatory process[28]. This speaks a lot about the effect of non-implementation or lack of proper popularisation of the legislation. Even for those who indicated that they know there are rules, not all were able to correctly cite the two Acts, CFTA and CPA. In fact, 57 percent mentioned the two. One mentioned the Energy Act while another one cited the Anti-Counterfeit Bill.

When those who indicated that there are rules, regulations and laws to check anticompetitive practice, they were requested to state whether some serious action is taken when the rules are violated, 47 percent said 'yes' always or sometimes and a similar proportion said 'no'. The expectation was that almost all of the respondents would have said 'no' because there had been no institutional set up since the law was passed for such an action to take place. Strangely, when asked whether the existing rules, regulations and laws are sufficient to check anticompetitive practices, two-thirds said 'no'. It is strange because 43 percent of those indicated that they did not know the 'rules, regulations and laws' while the rest mentioned irrelevant 'rules, regulations and laws'.

As to the agency that provides justice to consumers, CAMA scored highly. In fact, two-thirds of the responses on the question of consumer protection mentioned CAMA. Even the MTPSD had only one response. National Electricity Council (NECO) had three responses. Others with one response include Malawi Bureau of Standards, Malawi Economic Justice Network and Road Transport Operators Association.

Objectives and Scope of Needed Legal Framework

The majority of the stakeholders (80 percent) think that a comprehensive law should be enacted to focus on efficiency and consumer welfare (72.5 percent). Others (22.5 percent) think the law should take into account other socio-economic issues. The stakeholders further said that the law should cover all types of enterprises and persons and all areas of commercial activity (85 percent) and exempt no type of enterprise or unit (92 percent). Further, 70 percent said the law should provide for the monitoring of dominant firms to avoid abuse of their power. This is in line with their agreement that dominant firms breed efficiency but their activities must be monitored to prevent abuse of their market power; 58 percent strongly agreeing and 24 percent just agreeing. Asked whether Malawi has state-owned monopolies, 80 percent said "yes". Further, 60 percent said these monopolies indulge in anticompetitive practices.

On review of M&As to check substantial lessening of competition, 45 percent of the stakeholders said that there should be provisions in the law for reviewing all mergers and acquisitions while 40 percent said only bigger deals should be reviewed. These responses should be viewed against the background that 56 percent of the respondents did not know that whether there are provisions in the legislation to determine the merits of M&As.

The majority of the respondents (80 percent) even suggested that the law should provide for extra-territorial jurisdiction to deal with practices that originate from outside the country. Two-thirds of the respondents also said that the law should deal with abuse of intellectual property rights by companies with them.

However, when asked whether they would suggest a total ban on ACPs, there was some variation although those who wanted a total ban were many, by comparison (refer table 4.4). This ties with the

Table 4.4: Views on Whether to Ban Anticompetitive Practices

	Frequency	Percent
Yes for all	16	40
Yes for some	9	22.5
Yes but exempted for efficiency gains	6	15
No, only if it harms public interest	7	17.5
Don't Know	2	5
Total	40	100

28 It is possible that the respondents chosen by the visited organisations did not know while others in the organisation could have been in the know.

stakeholders' views that business people either focus on profit only (56 percent) or profit, but sometimes they balance between consumer welfare and profit (30 percent).

The majority (62.5 percent) could not say whether or not the law should have provisions for leniency programme and whistle-blower protection. Only 20 percent said 'yes' as 17.5 percent said 'no'. As to whether there should be exemption on public interest grounds (e.g., technological advancement, protecting interest of SMEs or socially advantaged groups, employment), 46 percent said 'yes' while 24 percent said 'no'. To protect the provision from abuse, 40 percent proposed that well-defined guidelines should be laid while 24 percent said 'no'. The rest could not tell. When the respondents were also asked as to whether the law should criminalise violations of the law, 44 percent could not say anything as 22 percent said it should in some cases and 10 percent said it should not.

Regarding the right to private action, 67.5 percent said the law should provide for the same, but when asked what they would do if they encountered any anticompetitive practices, 56 percent said they would seek help from consumer forums while 26 percent said they would seek help from legislation.

The Competition Authority and its Scope

As already seen, the CFTA had provided for a Competition Commission as an autonomous body. When asked about the kind of implementation mechanism the competition authority should have, 57.5 percent said that it should be an autonomous competition policy while 35 percent said an agency under relevant government ministry or department. There were varied views on the kind of power the authority should have. Two-fifths (40 percent) said the authority should have both investigative and adjudicative powers while 37.5 percent said that the authority should have investigative powers only with adjudicative powers vested with courts. Others (17.5 percent) proposed that the authority should not have either powers and that the powers should be with the courts. As to whether the competition authority should deal with both unfair trade practices and consumer protection, 90 percent said 'yes'.

Table 4.5: Competition Authority or Sectoral Regulators

Option	*n=40*
Yes for some with CA having power over them	40.0
Yes for some with CA coordinating with them	15.0
Yes for many of them with CA having power over them	15.0
Yes for many of them with CA coordinating with them	22.5
Others	7.5

Considering that some sectors, for example electricity and telecommunications, could have sectoral regulators, respondents were asked to define the scope of the competition authority in terms of its coverage of sectors with sectoral regulators. Table 4.5 presents the responses to the question 'should there be specialised sectoral regulators for electricity, telecommunications etc., or the CA should handle such issues?'

Regarding the involvement of other stakeholders in the functions of the competition authority, 90 percent said the authority should involve them through a consultative committee (75 percent) or by occasional hearing (17 percent).

Market and Competition

General Market Structure

The size of the Malawi economy does not present lots of prospects for competition. The GDP at market prices in US$ averaged US$1.8bn in the period 2000-2004 and ranged from a low of US$1.6bn in 2003 to a high of US$2.0bn in 2002. This is clearly demonstrated by the less than US$200 per capita levels of both GDP and GNP (refer table 4.6).

Table 4.6: Size of the Domestic Market

Year	Nominal GDP (MKM)	Nominal GDP (US$m)	Nominal GDP Per capita (MK)	Nominal GDP Per capita (US$)	Nominal GNP Per capita (MK)	Nominal GNP Per capita (US$)
2000	103,815.0	1,743.5	10,278.7	172.6	10,168.8	170.8
2001	123,704.1	1,713.4	11,894.6	164.7	11,673.2	161.7
2002	148,119.1	1,983.0	13,973.5	187.1	13,709.9	183.5
2003	171,917.8	1,654.8	15,772.3	151.8	15,472.4	148.9
2004	206,708.0	1,898.1	18,964.0	174.1	18,567.6	170.5
Average	**150,852.8**	**1,798.5**	**14,176.6**	**170.1**	**13,918.4**	**167.1**

***Source**: RBM (2005). Financial and Economic Review, Volume 37, Number 1, 2005.*

As already indicated under the general background, the structure of the economy does not provide much scope for across the board competition (refer table 4.6). When trying to assess the level of competition in a sector, the number of players can be used as a first measure. In case of the Malawi economy, the number of players varies, sector by sector[29]. For example, sectors with a good number of players include agriculture (small and large scale), internal freight and passenger transport, construction, distribution, private, social and community services. Sectors with limited numbers of players include manufacturing, financial, and professional services. Some like electricity, water and telecommunications are run by Government utility monopolies. As expected, there is only one player, the Government, under producers of government services.

Table 4.7: Structure of the Economy 2000-2004
(Sectoral Shares in GDP)

	2000	2001	2002	2003	2004
Agriculture	39.1	38.2	38.5	39.8	39.1
Small scale	30.9	30.7	30.0	32.3	30.5
Large scale	8.2	7.5	8.4	7.5	8.6
Mining and quarrying	1.4	1.6	1.0	1.1	0.9
Manufacturing	12.9	11.6	11.4	11.2	11.4
Electricity and water	1.4	1.4	1.5	1.4	1.5
Construction	2.2	2.2	2.4	2.6	2.8
Distribution	21.0	22.1	22.1	21.0	21.4
Transport and communication	4.2	4.3	4.9	5.2	5.3
Financial and professional services	8.0	8.1	8.5	8.6	8.9
Ownership of dwellings	1.4	1.5	1.5	1.5	1.5
Private, Social and community services	2.1	2.2	2.2	2.2	2.2
Producers of government services	9.2	9.7	9.4	9.0	8.8
Unallocable finance charges	-3.0	-2.9	-3.3	-3.6	-3.7
GDP at Factor cost	100	100	100	100	100

Source: Ministry of Economic Planning and Development, Annual Economic Report 2005

However, it is not always the case that competition flourishes in sectors or sub-sectors with a large number of players. In Malawi, associations and cartels effectively smoulder competition, since members fix prices together rather than subject themselves to competition.

The private sector in Malawi was characterised by dominant public corporations and foreign-owned companies. The direct contribution of indigenous Malawians in the private sector has been minimal. Privatisation was introduced to reduce public corporations' presence in the private sector. At the same time, some efforts have been made to increase the participation of indigenous Malawians in the purchase of some of the privatised assets. The manufacturing sector is dominated by agro-processing and the production of agriculture supporting inputs. The manufacturing sector is, by and large, under-developed with limited competition, diversification, and inter- and intra-industry linkages. While its orientation is import-substitution, it is heavily dependent on imported raw materials and intermediaries. This makes the sector a net user of foreign exchange.

Nature of Competition in the Market

There are a very few competitive markets in Malawi, if at all. As already stated, the size of the economy limits the production capacity of players and by implication, the number of players. Small-scale farmers compete when selling their produce. However, they face markets that are not perfect. For example, tobacco growers face limited number of buyers who collude during the tobacco auction. Likewise, cotton growers compete with each other when selling their cotton but they face a cartel of buyers who fix prices for the farmers. It is only in the markets for less important crops where farmers meet competitive markets.

Markets for manufactured goods are, to a large extent, competitive. Trade liberalisation has ensured that monopolies or oligopolies face up to competition from imports. Competition is present in markets of consumer goods, edible oils, skin care, beauty products and household goods (durable and non-durable). There are few manufactured goods that face limited competition in Malawi. Limited competition exists in markets for sugar, opaque beer, and soft drinks. Franchising make markets for motor vehicles and their genuine parts less competitive. The financial market, which used to have limited competition, has

29 This section also benefited from a desk study undertaken by Messrs Steve Dunga and Betchani Tcherani of the Ministry of Trade and Private Sector Development.

some competition due to financial sector reforms with the entry of some retail banks, the transformation of non-retail banking financial institutions into retail banks, and the privatisation of some financial institutions, including the two dominant commercial banks.

The transport services market is potentially a competitive market. However, minibus, taxi and transport operators' associations have muzzled competition. Association members agree on rates and fares. Non-members generally follow seeing the advantages of using the 'market leaders' rates. Although the respective associations fix the transport rates/fares, they are generally negotiable within some limits.

Some markets have no competition at all. Monopolies still run the local air travel, electricity and water. The entry of two mobile phone operators introduced limited competition in telecommunication sectors. In all these three sectors, high economic rents and inefficiencies abound. The Government is working towards introducing competition in these sectors through increased private sector participation, as will be seen later.

Level of Competitiveness of the Local Firms

Anecdotal evidence shows that most of the local firms are un-competitive. This is evidenced by the shrinking contribution of the manufacturing sector to GDP. Apart from scaling down, some manufacturing outfits have closed down following the introduction of trade liberalisation. Local firms point at unfair competition (dumping) from imports while analysts point at local firms' failure to adjust to competition due to obsolete technologies and outdated management styles. A fair assessment of the level of competitiveness of local firms would cite high transport costs, high-import content of raw materials (also due to the high transport cost), low labour, (limited skills training) and capital productivity (use of obsolete technology) as the main causes. Trade liberalisation has, of course, led to the blossoming of the distribution sector and informal trade. It seems local firms have not taken advantage of the trade liberalisation to source their raw materials cheaply or even improve their technologies.

Existing or Potential Entry Barriers

For all practical purposes, there is free entry and exit for enterprises. In terms of legislation, there are no barriers to entry for most goods consumed by the population. There are few barriers to entry in Malawi. In some cases, some enterprises have been granted exclusive concessions, among them sugar and beer manufacturing. These were granted to attract investors and then protect their 'massive' investments. In most others it is simple 'red tape' despite the enactment of the Malawi Investment Promotion Act and the establishment of the Malawi Investment Promotion Agency, which were meant to streamline business registration, among others. Further, allegations of corrupt practices among civil servants and politicians have also acted as barriers to entry. The highest barrier to entry, though, has been economic mismanagement (evidenced by unsustainable domestic borrowing). This has resulted in an unstable business environment characterised by high costs of conducting business (inflation and interest rates).

Apart from these artificial barriers, there are natural barriers to entry, especially for foreign investors. These include the distance (time factor) and cost to foreign markets, limited availability of semi-skilled personnel and the pervasive poverty (epitomised by a small market). There are also potential barriers to entry in some financial sector where minimum capital requirements bar potential players to enter. A recent case is that of foreign exchange bureau. The minimum requirements have been revised upward substantially. Many existing bureaux operators are likely to fail to renew their licences. Further, the Reserve Bank of Malawi has requested bureau operators to form an association. This, despite its noble intentions, will have the negative impact of stifling competition among them – where currently, there is some health competition. There are fears that the increased minimum requirements will just breed informal bureau.

There are legal barriers to entry in the utility sectors. Competition is not allowed in water and electricity. Bureaucratic barriers exist in telecommunications where the MACRA is charged with the responsibility of scrutinising entrants. So far, a third mobile phone operator that applied for a licence some time ago is yet to be given that licence to enable it to operate.

Market Concentration[30]

There are a number of sectors where market concentration exists in Malawi. The clearest example is the sugar-manufacturing sector. Illovo Sugar owns both Nchalo and Dwangwa plants. There is one owner each in water, electricity, rail, and water transport sectors. Government owns parastatals operating water and electricity services. Government privatised the parastatal that operated water and transport services to two separate companies. There is also considerable market concentration in the beer and soft drink manufacturing industries. Southern Bottlers Limited owns plants for beer (Carlsberg brand and a local beer called Kuche-Kuche) and soft drinks (Coca cola, Fanta, and Sprite and fruity flavours like Cocopina, Cherry plum, Ginger ale, and Soda water).

30 It has been difficult to calculate indices because of lack of data in most of the sectors.

Bowler Limited owns the two opaque beer-manufacturing companies. In fact, Bowler Limited acquired a competing company.

There are only two main operators in the telecommunication market; namely Celtel Limited (a private mobile phone operator) and Malawi Telecommunications Limited (a public fixed line operator and co-owner of Telekom Networks Malawi Limited, a second mobile phone operator). A few dominant players dominate the hospitality market. Sunbird Limited owns a hotel chain of six hotels and inns. Of late, the market saw the entry of new owners running equally good, if not better, services in the major cities as well as lakeside resort areas. This has, somehow, reduced concentration. In general, concentration is highest in markets run or previously run by state-owned corporations where monopolies are assumed to be best suited.

Table 4.8: Anticompetitive Practices Prevalent in the Markets

ACPs	Top most ACPs	All ACPs
	n=50	*n=139*
Collective Price Fixing	52	23.7
Market Sharing	6	12.9
Price Discrimination	6	12.2
Exclusive Dealing	6	11.5
Entry Barrier	10	10.1
Bid Rigging	10	8.6
Resale Price Maintenance	4	8.6
Predatory Pricing	2	5.0
Concerted Refusal to Deal	0	2.2
Under Pricing	4	2.2
Tied Selling	0	1.4
Small Size Argument	0	0.7
Dumping	0	0.7
	100	**100**

Perspectives on Competition

Anticompetitive Practices in Malawi

When asked to rate the prevalence of anticompetitive practices in the market, eight percent said they are hugely prevalent while 54 percent said they are significantly prevalent and 32 percent said they are moderately prevalent. Only six percent said they are insignificant. On the effect of these anticompetitive practices on consumers, at least 74 percent said that consumers are significantly affected. In fact, the highest proportion (40 percent) said the practices hugely affect consumers. Only four percent said that consumers are insignificantly affected.

The anticompetitive practice most prevalent in the market is collective price fixing. Over half of the respondents (52 percent) mentioned this. This was followed by bid-rigging (10 percent) and entry barrier (10 percent). When all the responses for the three options are put together, collective price fixing is still the largest prevalent anticompetitive practice. Entry barrier is the fifth most prevalent anticompetitive practice with market sharing, price discrimination and exclusive dealing, in that order, following collective price fixing. Bid rigging, which featured as the second top most prevalent anticompetitive practice, becomes sixth when all options are combined (refer table 4.8).

When asked about the sector most affected by anticompetitive practices, the trading sector (distribution) was the one most frequently mentioned. Others mentioned general trading, but tobacco trading was by far the most frequently mentioned type of trading that was affected by anticompetitive practices. The second sector most affected by anticompetitive practices was manufacturing followed by services. When the responses for the three options are aggregated, the pattern does not change. However, the proportion of respondents mentioning manufacturing and services increased (refer table 4.9).

On the level anticompetitive practices are prevalent, it seems that stakeholders were clear that price discrimination is prevalent at the local levels while collective price fixing is prevalent at the national level. It is also clear that entry barrier is prevalent at the national level. However, the stakeholders seem to suggest that the prevalence of anticompetitive

Table 4.9: Sectors Affected by Anticompetitive Practices

Sector	*n=46*	*n=106*
Distribution	30.4	27.4
Manufacturing	13.0	17.0
Private, social and community services	8.7	12.3
Construction	6.5	6.6
Transport and communication	2.2	6.6
Agriculture	6.5	5.7
Financial and professional services	6.5	4.7
Some groups	8.7	4.7
All sectors	6.5	4.7
Government services	6.5	3.8
Utilities	0.0	3.8
Some groups in some areas	4.3	2.8
	100	100

practices at the two levels is not mutually exclusive. For example, collective price-fixing and entry barriers are said to be prevalent at both local and national levels Table 4.10. Asked whether the anticompetitive practices originate from outside the country, 54 percent said 'yes' while 22 percent said 'no'. The rest did not know where anticompetitive practices originate.

Table 4.10: Anticompetitive Practice Prevalence by Level

ACP	Local level	National level
	n=106	**n=129**
Price Discrimination	15.1	10.1
Collective Price Fixing	14.2	24.0
Bid Rigging	13.2	5.4
Entry Barrier	13.2	13.2
Market Sharing	8.5	9.3
Predatory Pricing	8.5	8.5
Exclusive Dealing	7.5	12.4
Resale Price Maintenance	6.6	7.8
Tied Selling	5.7	1.6
Concerted Refusal to Deal	3.8	3.9
Under Pricing	2.8	3.1
Small Size Argument/dumping	0.9	0.8
	100	100

It is not clear whether the stakeholders' suffered from biases. Cursory analysis indicate that a certain bias existed. For example, respondents from the professional services sector mentioned collective price fixing and price discrimination as the top anticompetitive practices. It is suspected that these responses were purely professional. However, stakeholders from the distribution sectors mentioned concerted refusal to deal, resale price maintenance and exclusive dealing as the top anticompetitive practices, which reflect from their experience. Again, those from financial services had collective price fixing and exclusive dealing as top two anticompetitive practices while those from other services sectors mentioned entry barriers and collective price discrimination. Stakeholders from the transport sector mentioned mostly price discrimination and exclusive dealing.

The analysis is indeed cursory and it is possible that their personal experiences as consumers could have biased their responses rather than their work experience. To get around this, the sectors in which anticompetitive practices are most prevalent were compared against the stakeholders' sectors. It was found that the responses were not necessarily biased. For example, manufacturing as the most affected sector with anticompetitive practices was mentioned by 23.5 percent of the respondents from manufacturing sector. A similar proportion (24 percent) was found in distribution. Otherwise, all other stakeholders mentioned sectors other than those they operate in. This implies that the responses were not necessarily biased.

Market Structure and Competition in Selected Sectors

This sub-section presents sector-specific legal and administrative frameworks *vis-à-vis* competition in pharmaceuticals, financial, power and telecommunication sectors. This follows literature reviews and key informant interviews.

Pharmaceuticals

The Pharmacy, Medicines and Poisons Act of 1988 governs the pharmaceuticals sector. The Act provides for the establishment of the Pharmacy, Medicines and Poisons Board of Malawi to regulate the sector. In particular, the board is empowered to register and de-register any entity operating a pharmacy business in Malawi. This includes manufacturing and trading. No pharmacy business is registered unless managed by a registered pharmacist[31] under various classes of licences. A product licence is required for the selling, supplying, exporting or importing, procuring, (for sale, supply and exportation) and manufacturing (for sale, supply and exportation) of any medicinal products.

Apart from a product licence, a pharmaceutical manufacturer is required to have a manufacturer's licence. Likewise, apart from product licence, a pharmaceutical wholesaler requires a wholesale dealer's licence just as a retailer requires a dispensing licence. An application for a product licence is required to have a description of the medicinal products on which basis the board checks the product's safety, efficacy, and quality. The board requires an application for a manufacturer's licence to detail the proposed operations, premises, equipment, qualification of supervisors and arrangements made for safe keeping of the products and records. Similarly, an application for a wholesale dealer's licence has to describe the premises for the storage of the medicinal products, equipment for storing the products, equipment and facilities for distributing the products, qualification of the supervisor and arrangements for safekeeping of the products and records.

31 Pharmacists include professional pharmacists, pharmacy technologists and pharmacy technicians.

One would be tempted to conclude that legislation restricts entry into the sector. However, evidence shows that entry is not restricted. MIPA and the Board continue to receive enquiries and application on pharmaceutical business, respectively. According to the latest register, there are three manufacturers; Pharmanova Limited operating from Blantyre, SADM Pharmaceuticals Limited operating from Lilongwe, and Kentam Pharmacy operating from Mzuzu. Importation of pharmaceuticals covers for most of the gap in manufacturing. There are 21 registered pharmaceutical wholesalers, 21 registered retail pharmacies, and 28 medicine (for persons, animals and plants) stores. Most of these are located in the urban and semi-urban areas. Rural areas are starved of retail pharmacies and drug stores. In terms of competition, the pharmaceutical sector is competitive. It does not have an association and this has helped keep the competition. The anticompetitive practice mentioned in the sector was violation of registered trademarks and copyrights. It was reported that manufacturers produce counterfeit products of Malawi manufacturers, which qualifies as unfair trading practice.

Financial Sector

There are three pieces of legislation that govern the financial sector namely the Reserve Bank of Malawi Act, Banking Act and, to some extent, the Capital Market Development Act. The Reserve Bank of Malawi – the country's central bank – regulates the market. It registers financial institutions dealing with retail banking, foreign exchange trade, leasing and financing, trade financing, pension funds management, insurance and re-insurance. Following the liberalisation of the financial sector in the early 1990s, and lately the privatisation of the two commercial banks owned by three public conglomerates (ADMARC, MDC and Press Corporation Limited), the financial sector witnessed the entry of new players into the market. According to the latest National Statistical Office's business information register, there are 20 businesses involved in financial intermediation, the central bank inclusive[32]. Out of these, there were ten commercial banks with different market shares in terms of deposits as of June 25, 2005 (refer table 4.11).

Table 4.11: Commercial Banks Market Shares

Bank	Share (in %)
National Bank of Malawi	40.1
Stanbic Bank of Malawi	23.7
First Merchant Bank	11.3
NBS Bank	11.0
Nedbank Malawi Limited	3.5
Malawi Savings Bank	2.9
Indebank Malawi	2.8
Loita Bank of Malawi	2.2
Finance Bank of Malawi	1.2
Leasing and Finance Company	1.1
All	100

Source: *Reserve Bank of Malawi*

The key barrier in the sector is possibly the capital requirement. However, this is considered necessary for confidence building and stability of the sector. The sector has witnessed the introduction of new products to the advantage of consumers. The main hindrance in the sector has been the crowding out of the private sector due to the Government's heavy borrowing. This has started to change in recent years after the new Government adopted tight fiscal and monetary policies. This has resulted in the consistent reduction of the bank rate and, to some extent, the liquidity reserve ratio. Although the sector is more competitive than before, it can still benefit from the entry of large players. Apparently, dominant and established players still lead the market and sometimes collude and engage in predatory pricing. Lack of competition is manifested by wide deposit and lending rates spread.

The Government has also recognised that the Capital Market Development Act is out of date. A number of bills to make the Act up-to-date have been developed. These include Securities, Insurance, Anti-Money Laundering, and Combating Financing of Terrorism bills. These are yet to be tabled and passed. These will not necessarily reduce entry requirements, but will increase the number of products in the financial market.

Power

The Energy Act and the amended Electricity Act govern operations of the power sector. A state-owned monopoly generates, transmits, and distributes electricity in the country. This was provided for, in the Electricity Act. The Energy Act, in tandem with the move to liberalise the sector has provided for private sector participation in the sector. The National Electricity Council, set up under the Electricity Act, was to regulate the participation of other players in the electricity sub-sector. With the enactment of the Energy Regulation Act, the scene was set for private sector participation in the power sector. The 2002 Malawi Energy Policy White Paper and 2003 Power Sector Reform Strategy for Malawi articulate the envisaged role of the private sector.

The Energy Regulation Act provides for the establishment of the regulatory body to replace the

32 Again, one financial institution offering retail banking has closed recently following Government scrutiny of its activities.

National Electricity Council called Malawi Energy Regulatory Authority (MERA). This will oversee the reforms in the sector apart from playing the oversight role, once the sector is reformed. According to the two documents and key informants interviewed, the first step will be the unbundling of the market structure into its natural three segments of generation, transmission, and distribution. Reforms in the Electricity Supply Commission of Malawi (ESCOM) started with employment of change managers; establishment of three business units of generation, transmission and distribution; and asset evaluation, and the development of financial systems for each business unit. Currently, the systems are in place such that the three segments sell to each other. The second phase will be to actually separate the ownership of these three business units. The financial and operational separation will facilitate this ownership separation, since some history would have been established as to the assets, financial accounting systems, and costs and sales for each. Once these are separated, private sector participation is envisaged as follows:

Generation: A public company will own and operate the generation. However, independent power producers will be allowed to develop and own generation capacity. Co-generation by major industrial plants will also be encouraged. MERA will be responsible to facilitate the private sector participation.

Transmission: Government will own the assets, but will give a long concession to a private company to run the operations. The public company generating power and the independent power producers will sell their power to the private company running the distribution network. Natural monopoly will be maintained in this segment.

Distribution: Government will retain the ownership of the distribution network, but will transfer the management to at least three distribution entities, possibly on regional lines, under long-term concessions of no more than 20 years. The independent power producers will be allowed to develop and operate their own distribution networks in distinctive geographical locations under exclusive geographical licence and also enter power-purchasing agreements with the distribution company covering their areas to enable them supply through their networks. In the short-term, one distribution company has been envisaged.

The reforms in this sector are progressing too slowly. According to the reforms implementation schedule in the strategy paper, all the short-term reforms were supposed to have been completed by December 2004. However, ESCOM is still intact; the business units have not separated in terms of ownership and operations. The Privatisation Commission has put this on high priority since 2004.

Telecommunications

The Communications Act is the legal instrument governing the telecommunication sector. The Malawi Communications Regulatory Authority (MACRA) regulates the sector. According to the NSO's Business Information Register, there are 22 operators in this sector. However, there are three main players. A public company, Malawi Telecommunications Limited, operates a fixed-line network covering the entire country. There are two mobile phone operators. The first is Telekom Networks, owned by a foreign company and Malawi Telecommunications Limited. The second is Celtel Limited. So far, these two are competing and each tries to introduce innovative products for the good of their customers.

However, the sector would benefit from more players. The key to competition in the sector is the privatisation of the Malawi Telecommunications Limited. The privatisation of this public enterprise began in 2001 and was finally concluded in February 2006 after a number of controversies and court injunctions. It is hoped that efficiency and competition in the short to medium term will ensue in the fixed line sub-sector. Further, it is hoped that MACRA will issue a licence to a third mobile phone operator that had applied at least two years ago.

The Privatisation Programme and Competition

One of the objectives of the privatisation programme is to increase competition and reduce monopoly. The idea is that some public enterprises are monopolies in their sector because of protection afforded to them by legislation, Government policy, or their sheer dominant position. Privatisation can enhance competition in many ways. The first is that a monopoly can be broken down and be sold in bits that would compete with each other. An example would be the privatisation of Malawi Dairy Industries and Cold Storage Limited units. These are currently competing with each other in the market. The Privatisation Commission made sure that these units were sold to different buyers to enhance competition. The second involves cutting off protective legislation and policies surrounding a public monopoly before its privatisation. This exposes the sector and the privatised monopoly to competition. This is what is planned in the telephone, water, and electricity sub-sectors where public enterprises dominate. Privatisation and restructuring of a number of Government financial institutions, including the Commercial Bank of Malawi, the Malawi Savings Bank, Indebank Limited, Finance Company of Malawi and New Building Society, have increased competition in the financial sector.

However, not all privatised monopolies lead to increased competition. The privatisation of the entities in the sugar-processing sub-sector may have improved efficiency but has created a monopoly sugar company with no clear competition, even from imports. This is also true of the Malawi Railways (1994) Limited and the Malawi Lake Services. Government presence may have assisted in terms of moderating price increases. Currently, there is no mechanism to moderate price increases. In general, though, the privatisation programme has increased efficiency and improved competition, both of which have positive effect on consumer welfare.

The public has not always viewed privatisation in the light of its effect on competition. Newspaper articles in the two major *dailies – Daily Times* and *The Nation* from 1997 did not relate privatisation to competition and rarely consumer welfare. Most of the views concentrated on job losses and loss of ownership by Malawi or low participation by Malawians. This is despite an intensive media and aggressive public relations office. In fact, privatisation has rarely been in the positive light. Of all the sales, privatisation of David Whitehead and Sons (a textile manufacture) and Malawi Telecommunications Limited and the planned privatisation of ADMARC (a marketing and development public company) and urban water boards have drawn the worst criticisms. Although the criticism varies from company to company, the bottom line has been the poverty impact of those few benefiting from these public companies and not necessarily those who fail to benefit from them who could, once privatisation takes place. So far, the proposed private sector participation in the electricity supply has not drawn any serious criticism, possibly because of its obvious inefficiency in terms of quality of supply and failure to meet an increasing demand.

Most Prevalent Anticompetitive Practices

There are a multitude of anticompetitive practices in the country. This section attempts to highlight some cases as review of the earlier work undertaken by CUTS CCIER and CAMA and in light of stakeholders' views expressed through the filled questionnaires and key informant interviews with the Treasury, Public Enterprises Reform Management Unit, MTPSD, Reserve Bank of Malawi, Malawi Investment Promotion Agency, Energy Department of the Ministry of Natural Resources and Environmental Affairs, National Electricity Council, ESCOM, the Privatisation Commission and MACRA. The presentation follows the sequence presented in Chapter 4 of the CUTS CAMA report. Areas deemed to have a problem are not mentioned.

Cartels, Associations and Collusions

Cartels and collusions still exist in petroleum importation and retailing. Again, and as already indicated above, associations in the transport sector collusively set fares and rates. Retail banks also seem to collude or simply follow a leader or leaders in setting their deposit and lending rates as well as foreign exchange rates judging from their similar spreads. In some cases, the difference could be either in hidden as opposed to transparent costs such that the bottom line is the same.

Other cases of collusions are apparent in the purchase of produce. The tobacco, tea and cotton markets are characterised by collusive buyers. The tobacco market's chance of competition was dashed with the merger of Diamon and Stancom Tobacco Limited. This further reduced the number of players from four to three and reduced the number of major players to only two; Limbe Leaf and the amalgamated Dimon and Stancom. In the cotton market, the three major buyers grouped themselves in what is called Cotton Development Association. This association fixes the prices of cotton. The only player out of this cartel (Iponga) is too small to influence the market. In the tea auction market, the problem is simply too few buyers with the likelihood of collusive bidding.

Monopolies and Dominant Firms

There are a few monopolies in the country apart from the public enterprises considered natural monopolies in telecommunications, electricity and water. One such is Illovo Sugar Company, which processes sugar. It owns most of the sugar estates and all the processing equipment. It has insignificant competition from imports, especially in the upmarket hotels. The rail and water transport services, which were also under public monopolies, are run as private monopolies. However, the rail and water transport service providers are not dominant players as road transport competes favourably except in some water-locked areas and islands. With the opening up and the divesture of commercial entities owned by the once omni-present conglomerates (ADMARC, MDC and Press Corporation), there are few dominant firms with unchallenged market power from imports.

One such dominant firm exists (Southern Bottlers Limited) in bottled beer brewing in urban areas, despite competition from imported beer, opaque beer and other alcoholic drinks. It is still dominant due to price and quality differences among beers and other alcoholic drinks. The same company dominates the production of franchised drinks like Coca-Cola, Fanta, and Sprite. There is some competition from some locally produced soft drinks as well as imported ones as its market share is still large because of its

countrywide delivery system. No other firm has such a system. There is also a biscuit manufacturing company, Universal Industries, which dominates, although it is not immune from imported brands. Its range of biscuits in terms of brands, price and quality make this company a dominant firm. It used its dominant position to subdue its only competitor, Zokoma Biscuits Limited and eventually acquired it off.

Another sub-sector dominated by one firm is cement manufacturing. There used to be two companies – Portland Cement Company and Shayona Cement Company – but the latter closed down. Portland Cement has exploited its dominant market position to convince the Government to put a bar on cement imports. In fact, the price of its cement is kept in check by cement imports.

Restrictive Trade Practices

The one known existing restrictive practice is when manufacturers of drinks and dairies provide 'chilling cabinets' to retailers on condition that such cabinets are used to stock their brands only.

Anticompetitive M&As

There have been a number of anticompetitive M&As in the country. The Competition Commission has just stopped a planned merger of two petroleum-importing companies. Similar mergers and acquisitions used to take place previously, and went unquestioned. These included the merger of Chibuku Products and Napolo Ukana Breweries, two rivals in the opaque beer market.

Three mergers have been referred to the Competition Commission. These were not disclosed but it is assumed that one of them is the thwarted merger of Mobil Oil and Caltex.

Regional Trade and Competition Framework

The opening up of Malawi to imports and the introduction of free trade amongst members of regional groups like SADC and the COMESA. COMESA has exposed the economy to 'imported' African, Caribbean and the Pacific (ACP). Stakeholders pointed out that some anticompetitive practices originate from outside of the country and as such the competition law and commission should be designed to deal with such anticompetitive practices as well. Foreign companies can take advantage of the zero-rated custom duties to dump goods in the local market. While the Malawi legislation can provide for such eventualities, it is impractical to follow on these. Some regional framework is necessary to enhance competition and reduce the incidence of anticompetitive practices on imported goods and services.

COMESA is more advanced than SADC in terms of drafting a competition policy and law.[33] According to the COMESA in Brief, the draft regional competition law and policy are intended "*to harmonise existing national competition policies and avoid contradictions and provide a consistent regional economic environment.*" (COMESA 2003a: 14). Malawi was one of the countries with an existing competition policy and law by the time COMESA developed its own. Further, Malawi was party to the regional negotiations that shaped the draft regional competition policy and law.

It is clear after going through the COMESA competition documents that both benefited from similar guidelines and principles. Indeed the COMESA in Brief states that the regional competition policy and law is consistent with the Organisation for Economic Cooperation and Development (OECD) and UNCTAD guidelines and principles. Just as Malawi has Competition Policy, Law and Commission, COMESA has already drafted a policy and law and has provided for a regional body called the COMESA Competition Board.

What has not been seen is the link between the CFTA and the proposed COMESA Competition Law; and between the Malawi Competition Commission and the COMESA Competition Commission. There is no provision in the CFTA relating itself to the COMESA Competition Law. Further, it not clear from the national law whether some cases involving enterprises from the COMESA region can be dealt with by either Commissions or both. Similar provisions cannot compensate for the need to relate to each other.

Conclusion

1. This study has come at a time when the government has taken steps to enhance competition in almost all the sectors, including those suited for natural monopolies; and established a competition commission. The study has the unique chance of acting as a baseline for the Competition Commission.

2. While the small size of the economy could be taken as a good reason for encouraging monopolies, the government has tried to open it up to as many players as possible. The shrinking manufacturing sector is of concern and efforts are being made to reverse the trend as evidenced by the adoption of the Malawi Economic Growth Strategy in 2003 and current development of the Malawi Growth and Development Strategy.

33 The discussion is based on the drafts made available during the COMESA Regional Competition Policy Seminar held in Blantyre, on May 02, 2003.

3 Structural adjustment, with its trademark trade liberalisation and free markets, provided a fertile environment for the growth of uncompetitive and unfair trading practices at the expense of the defenceless consumer. Price decontrols, commercialisation, privatisation and deregulation, which were meant to lead to consumer welfare gains *via* efficient gains, seem not to have always led to the desired goal in some markets.

4 Policies developed since 1994 recognise competition as a necessity for economic efficiency and consumer welfare gains. They specifically provide for the limitation of monopolistic, oligopolistic and concentrated markets. Competition and consumer protection policy and law were considered as solutions. In fact, the Government went as far as enacting legislation for the enhancement of competition and consumer protection following the adoption of the policies.

5 The enactment of the laws was not, unfortunately, followed with the establishment of institutions to make the laws effective. It took eight years to appoint the Competition Commission. One year after the appointment of the Commission its secretariat is yet to be set up and it is not clear when it will be. Again, the government is yet to establish the Consumer Protection Council and its secretariat. This gives the impression that promoting competition and protecting the consumer are currently not the Government's priorities.

6 The Competition Commission and the Consumer Protection Council are needed to address structural deficiencies in various markets. Existence of monopolies, oligopolies, associations, concentrated markets and dominant firms requires constant monitoring. More so, more work is needed to change the structure of the economy to lessen the work of the two bodies. There is need to encourage investments in markets known to have anticompetitive practices.

7 Government's efforts to reform the utilities sectors of power, telecommunications and water through privatisation, though too slow, are commendable. These sectors have failed to support private sector development, as they have been too slow to respond to demand. Although the pharmaceutical sector is relatively competitive, Government's intentions to further liberalise it by privatising the Central Medical Stores, are welcome.

8 Further, once the two bodies are operational, there will be need to harmonise the work of sector-specific regulators with those of the two bodies. Again, harmonisation of the work of the two bodies themselves will be essential if either is to be effective. In fact, a review of their functions and powers *vis-à-vis* competition and consumer protection will be necessary to maximise their cost-effectiveness and impact. The two can benefit from harmonisation of their work, functions, and powers.

9 Malawi requires intensive capacity building. As can be seen, even established companies have limited knowledge of both CFTA and CPA. Secondly, consumers have the least knowledge about these two Acts *vis-à-vis* their consumer rights. They have not been prepared to act in the face of anticompetitive practices. Training and civic education is required if the two acts are to take effect.

10 There are a number of areas where further research is required. The critical area is on the impact of privatisation on concentration and competition. There is need to take stock of sectors where privatisation took place to determine whether indeed privatisation improved competition or was it a simple transfer of monopoly powers from the state to the private sector. Another area is market concentration. There has been no serious study on this. No study has calculated concentration indices.

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John Preston and Karen Ellis, DFID, UK with Jawara Gaye, PROPAG, The Gambia

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Kimera Henry Richard, CONSENT, Uganda welcomes all to the Launch Meeting in Entebbe, Uganda, 2005

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Opening Session at the Launch Meeting in Entebbe, Uganda, 2005

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Panellists discuss, 'Promoting Healthy Competition Culture - How to move ahead in Africa, during the Regional Conference in Addis Ababa, Ethiopia, 2006

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Proceedings at the Regional Conference in Addis Ababa, Ethiopia, 2006

Participants during the Regional Conference in Addis Ababa, Ethiopia, 2006

Project Partners in Discussion at the Stage II Inception Meeting in Nairobi, Kenya, 2006

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Partners at the Stage II Inception Meeting in Nairobi, Kenya, 2006

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Chapter 5

Competition Scenario in Mauritius

Introduction

Economic theory demonstrates that welfare is greatest when markets are perfectly competitive. However, perfect competition does not exist in the real world, but the closer markets are to perfect competition, the greater the gains in welfare. This is because competition directs resources to their most productive uses in the economy and motivates firms to adopt the most efficient processes of production. Competition also ensures that the increased efficiency does not lead to increased profits for firms only, but reaches consumers as well.

As such, an effective competition policy should prevent the existence of anticompetitive practices. Indeed, a competition policy encompasses governmental measures that affect the behaviour of enterprises and the structure of the industry. It covers the broad spectrum of economic policies that have an impact on competition in the economy including trade policy, sectoral regulation, privatisation, etc. A competition law forms an integral part of the competition policy of an economy. It can be seen as a legal tool that allows competition principles to be enforced. By keeping a check on concentration of economic power, outlawing rent-seeking behaviour, preventing anticompetitive business practices by dominant firms, eliminating artificial restrictions on entry, exit, and pricing in industries where they exist, competition law and policy ensure competitive operation of the market, thereby providing entrepreneurs, including SMEs, with opportunities for participation in the economy and providing consumers with reduced prices, better quality and wider choices, all with the goal of achieving efficiency, growth, and equity.

In a small economy like Mauritius, one would expect market concentration to be higher on average than a larger economy, as a certain minimum scale of operation must be achieved to obtain acceptably low unit production costs. Moreover, a notable feature of the Mauritian economy is the concentration of economic powers in the hands of a small number of enterprise groups, most of them family-controlled. The operations of these large, extensively diversified companies have had a pervasive influence on the commercial and industrial development of the island. However, judging by the extent of competition on static data the number of firms in the market and market share is not totally right. An important concept related to analysing the competitiveness of a market relies in assessing its contestability. It is to be noted that it is relatively easy for firms to enter many private sector activities in Mauritius, especially those operations, which are small-scale and labour-intensive.

It should be acknowledged that several key economic reforms introduced over the years have helped foster stronger competition in the domestic market. Mauritius has witnessed important economic changes, which have made competition policy more important. These include privatisation and liberalisation with a view to achieving / achieve higher economic growth. However, to ensure that this outcome is achieved, there is a need for regulatory reform and a clearly-defined competition policy in place. For instance, liberalisation of controls on foreign direct investment (FDI) can come in the form of acquisition of domestic firms, which can have the effect of reducing competition in the market. Similarly, the government has significantly reduced the number of goods subject to the price-control mechanism. But, there is a risk that the market might not operate efficiently such as a cartel fixing prices and imposing significant price increases onto consumers.

The adoption of the Competition Act in 2003 was a major landmark in the field of competition. However, it is regretful to note that up till now, it has not been put into application. Lack of political will seems to have delayed the implementation of the law. In addition, as suggested by journalist, Shyma Soondur of L'Express Dimanche**,** the business community has connived to cause the Competition Act to be destined to failure. But, following a recent government decision to subject milk powder to a maximum mark-up and its intention to include other basic products under the same regime has encouraged the private sector of the economy to give the go-ahead to the application of the Competition Act (ICP Policy Brief No.3, Aug 2005). The Minister of Industry and Commerce, SMEs, and

the Cooperatives, and will hopefully present the new Competition Bill to the National Assembly very soon.

This Report is part of a study formulated by CUTS International entitled, 'Capacity Building on Competition in Select Countries of Eastern and Southern Africa'. The study is being carried out simultaneously in Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia, and Uganda. The Project is intended to help the policy makers, regulators, CSOs, particularly consumer groups, academics and the media to understand and appreciate competition concerns from national, regional and global perspectives.

This report has been enhanced by comments from different local economic actors from NRG meetings organised by the advocacy partner, namely the Institute for Consumer Protection (ICP). In addition, comments from regional meetings and from CUTS International itself have greatly helped in improving the report. All the more, a survey has been carried out among different stakeholders to gauge their views on competition. Two sets of questionnaires were prepared; one in Creole (the native language) addressed to consumers; and the other in English – addressed to the private sector and government institutions. Firms in the private sector and the government institutions were chosen so as to have a balanced spread of entities in the following sectors: agriculture; manufacturing; tourism; construction; Energy; and retail and distribution. It must also be pointed that the questionnaire from CUTS International was modified to take into account the realities of local context. A purposive sampling method was adopted for the survey. The questionnaires were given to 200 consumers as well as 50 firms in the private sector and 50 government institutions.

The study report has seven sections including the introduction. It starts by drawing a picture of the Mauritius economy followed by some selected economic polices that affect competition. An in-depth analysis of different sectors of the economy in terms of their structure and the level of competition is presented in the fourth section of the report, which also incorporates findings from the questionnaire with regards to the nature of anticompetitive practices in Mauritius and the sectors most affected by them. The fifth section examines the existing laws and regulations that protect consumers. Moreover, it includes an analysis of the Competition Act (2003) and competition law at the regional level. All the more, the findings of the survey on the adequacy of existing laws and the kind of competition authority desired is also reported. Section Six presents the interface between regulatory institutions and competition regime while analysing two important regulatory institutions in the financial sector and in the utilities sector. Lastly, Section Seven concludes the paper by formulating some policy recommendations.

Country Profile

Mauritius is regarded as a fast developing small island economy with an area of 2040 square kilometers. It is located in the Indian Ocean, about 2400 km off the South East Coast of Africa and 940 km east from Madagascar with geographic coordinates 20° 10' S, 57° 30' E. Since independence in 1968, it has developed from a low-income, agriculturally based economy to a middle-income diversified one with growing industrial, financial, and tourism sectors. Mauritius has a population of about 1.2 million from different ethnic and religious group consisting of Indo-Mauritian (68 percent), Creole (27 percent), Sino-Mauritian (three percent), Franco-Mauritian (two percent), Hindu (52 percent), Christian [28.3 percent (Roman Catholic 26 percent, Protestant 2.3 percent)], Muslim (16.6 percent) and others 3.1 percent. For most of the period, annual growth has been in the order of five percent to six percent. Mauritius has benefited from the preferential markets under the Lome Convention and the Sugar Protocol.

This remarkable achievement has been reflected in more equitable income distribution, increased life expectancy, lowered infant mortality, a much-improved infrastructure simultaneously has been well-poised to take advantage of the Africa Growth and Opportunity Act (AGOA). It has achieved rapid growth and an enviable development transformation to become a significant exporter of manufactures with an emerging service sector within a short space of time. The Gini co-efficient was 0.387 in 1997 and fell to its lowest to 0.371 in 2002 in order to represent a more equal spread of wealth and in terms of quality of life, Mauritius was ranked 62 out of 175 in 2003. The GDP was Mauritius Rupee MUR117bn (US$3.5bn) in the year 2000 and attained a value of MUR174bn (US$5,3bn) in 2004, bringing along a per capita GDP value of MUR9,9995 (US$3.046) in 2000 to MUR14,0856 (US$4.291) in 2004. However, the GDP growth has fallen from 9.3 percent in 2000 to reach 1.8 percent in 2002 and slightly rising to 4.5 percent in 2004. Inflationary pressures were 5.3 percent in 2003, increased to 6.2 percent in 2002 and fell to 3.9 percent in 2004. The ratio of budget deficit to GDP rose from 3.8 percent in 2000 to reach 5.6 percent in 2004, signaling government expansionary policies on the Mauritian economy. Table 5.1 gives some other economic variables on the Mauritian economy since 1968.

During recent years, the Mauritian economy has been under severe stress following the phasing out of the preferential markets and the need for diversification

Table 5.1: Selected Economic Indicators: 1968-2003						
Year	**1968**	**1980**	**1990**	**2000**	**2002**	**2003**
GDP at basic prices (Rs mn)	827	8697	39629	119529	124954	137206
Real GDP Growth (in percent)		-10.1	7.3	9.3	2.0	4.4
Inflation rate	7	42	13.5	4.2	6.4	3.9
Population	794746	969872	1058800	1186873	1210196	1222811
Unemployment (percent)	-	-	2.8	8.8	9.8	10.2
Per capita income (Rs)	104846	7719	37429	100680	117256	128314
Tourist arrivals (thousands)	15553	115080	278010	656453	681648	702018
Literacy rate (percent)	-	-	81	85	86	86
Total external debt (Rs. mn)	-	-	14234	28408	30046	28658
Debt service ratio (percent)	-	-	-	9.7	8.5	8.2
Source: *CSO and BOM reports*						

in order to prevent a slow down in economic activity. Unfortunately, the rate of unemployment kept on rising from 8.8 percent in 2000 to 10.7 percent in 2004, showing the Government's inability to create employment. All lands are fully cultivated, bringing along a scarcity of land resources in Mauritius.

As regards the political history of the island, the Dutch settled in Mauritius in 1598. The French took control of the island in 1715, and ruled the island until it was ceded to British Empire under the treaty of Paris in 1814. It became independent from Britain on March 12, 1968, and became a Republic within the Commonwealth on March 12, 1992. Mauritius has an unbroken record since independence in 1968 as a working democracy with a good human rights record, an active free press, and an independent judiciary. The President is a non-executive appointment, elected by the National Assembly for a fixed five-year term. There are three main political parties, namely: the MMM, the MSM and the Labour party as well as others willing to acquire position. However, ever since the first election conducted in the country, elections have been conducted in a fair and friendly manner.

Policies Affecting Competition

This section analyses a broad spectrum of economic policies that have had a direct bearing on competition in the Mauritian economy over the years.

Trade Policy

Trade Liberalisation

Trade policy regime in Mauritius can broadly be categorised into two periods. The period before trade liberalisation – the 1980s and early 1990s – where the major thrust of trade policy in Mauritius has been, on the one hand, the promotion of an export-led growth strategy with regards to the sugar industry, the Export Processing Zone (EPZ) and the tourism industry; and on the other, import-substitution with regards to domestic markets, particularly in agriculture. With the trade preferences under the Lome Convention and under the Multi-Fibre Agreement, (MFA) an EPZ was established as from the 1970s and the manufacturing sector is today one of the major pillars of the Mauritius economy, employing around one-fifth of the labour force and representing around one-fifth of the GDP. The share of agriculture in GDP (mainly dominated by sugar exports) has declined to around six percent, and that of tourism industry is around eight percent.

The period of trade liberalisation, from around mid 1990s, trade policy has been dictated by important changes in major export markets and by the need to comply with various trade reforms due to commitments taken at the WTO. With the 'Everything But Arms' (EBA, 2003) initiative and important changes likely to affect the Sugar Protocol and the phasing out of the MFA in December 2004, trade policy on the external front is aimed at expanding the economic space and restructuring of the sugar and textile industries in the EPZ. The Mauritius economy has also diversified into the financial services sector, which has become another pillar of the economy, and is recently promoting the information and communication technology (ICT) sector while at the same time consolidating and projecting the tourism industry on a higher growth path. In this changing international context, trade policy has become so crucial that a Trade Policy Unit has been set up since 1996.

Mauritius is also putting emphasis on the non-sugar agricultural sector, particularly, exports of fruits and flowers, promotion of food processing, and the fishing industry. Investment opportunities in the African region are also being tapped to benefit better from AGOA.

Trade policy has also aimed at promoting a more regional industrial development strategy. Mauritius is a member of the COMESA, the SADC, the Indian

Ocean Rim (IOR) and the Regional Integration Facilitation Forum (RIFF). For instance, a Special Economic Zone (SEZ) has been set up in Mozambique, where memorandum of understandings (MoUs) have been signed in agriculture, fisheries, horticulture, and livestock production. Similar initiatives are being undertaken in Madagascar.

Mauritius is also working upon garnering support for recognition of the vulnerability of 'small island development states' (SIDS) at the WTO. As such, a SIDS conference was held in Mauritius, in January 2005. The peculiarities of SIDS will be used as an important criterion in future trade negotiations.

On the domestic front, with the phased reduction in external tariffs, domestic producers are facing more competition from imports. Trade is therefore guided by the need to improve productivity at all levels. However, it is considered that companies producing for the domestic market are still fairly highly protected, as there are still many high tariff rates with high dispersion. The simple average tariff is 20.5 percent on agricultural imports and 19.8 percent on imports of non-agricultural products. Moreover, import quotas still apply to a number of products such as potatoes, onions, garlic, and salt. The State Trading Corporation, the Agricultural Marketing Board and the Meat Authority have import monopoly and fix the maximum prices of some strategic products such as flour, low-grade rice, cement, petroleum products, potatoes, onions, garlic, and meat etc.

The phase of import liberalisation and reduction of protection for local firms started in the period 1986-1988, with the progressive dismantling of quantitative import restrictions. In 1991, import licensing, once applied to the vast majority of imports, was eliminated for all except a limited range of products subject to health, sanitary or strategic controls. But the number of categories of prohibited goods has increased from 13 in 1995 to 24 in 2001. Imports of controlled goods are subject to permits issued by the Permanent Secretary of the Commerce Ministry. Specific conditions and restrictions are imposed on the imports of certain controlled goods. For example, imports of potatoes and table salt are subject to quotas. However, it was only in July 1994 that a major revision of the tariff structure was introduced. In 1994, a three-column tariff consisting of fiscal duty, general customs duty and a preferential duty was consolidated into a one-column import duty and the number of tariff rates reduced from 60 to eight. Maximum customs duty was lowered to 100 percent and for preferential countries the maximum was set at 80 percent. The maximum customs duty was 600 percent before June 1994. Tariffs were lowered on more than 4000 items in June 1994. In June 2000, tariffs have been removed from an additional 1,300 items. However, it is still considered that there are too many high rates and many exemptions, to the extent that the exemptions represent a loss of around 90 percent of tariff revenue. This year, the Government has announced to bring down the top tariff rates of 65, 55, and 40 percent to 30 percent such that the tariff structure will have only three non-zero bands, i.e. 10, 15, and 30 percent. Such measures are in line with the process of tariff liberalisation to transform Mauritius into a globally competitive economy and move to a Duty Free island to serve the African and Indian Ocean Region.

Participation in Regional Trade Blocs

It is part of the trade policy of Mauritius to expand regional trade and to sign MoUs with neighbouring countries in different areas of trade and commerce, which are mutually beneficial. Mauritius is a member of the regional blocs mentioned below:

The Indian Ocean Commission

Mauritius is a founding member of the Indian Ocean Commission (IOC), created in 1984. The Commission comprises the Comoros Islands, the French Reunion Island, Madagascar, and the Seychelles. The EU is the major funding partner in the various projects/ programmes of the IOC. The IOC, with the financial support of EU, has established a regional project, 'Programme Regionale Intégré de Developement des Echanges' s (PRIDE) with a view to make dynamic intra-IOC trade and providing support to the private sector. Accordingly, the four IOC Member-States belonging to the African, Caribbean and Pacific (ACP) group, are committed to eliminate tariff and non-tariff barriers (NTBs) on reciprocal basis. So far, Mauritius and Madagascar are already applying 100 percent tariff reduction between themselves.

Indian Ocean Rim Association for Regional Cooperation

Mauritius is a member of the Indian Ocean Rim Association for Regional Co-operation (IOR-ARC), which is a platform for economic cooperation among countries of the Indian Ocean basin at the inter-continental level. However, the IOR-ARC has not yet elaborated a framework for tariff liberalisation. It is currently focussing on the development of the business sector and on trade facilitation projects.

Southern African Development Community

The SADC Protocol on Trade was signed in August 1996 by 11 member states, including Mauritius. In broad terms, this protocol aims at the establishment of an FTA within a period of eight years from its entry into force. The Protocol became operational in February 2000 with effective tariff phase down as from September 01, 2000. In this context, members have agreed to reduce their tariff on a linear basis taking into account the different levels of development of members. Liberalisation is being carried out on the

basis of the variable geometry approach. Tariffs on about 85 percent of intra-SADC trade will be liberalised within a period of eight years (i.e. 2000-2008) whilst the remaining 15 percent will be eliminated from year 2008 to year 2012.

Common Market for Eastern and Southern Africa (COMESA)

The COMESA was established in 1994 as a replacement to the former Preferential Trade Area (PTA), which had existed from the earlier days of 1981. At present, it has 19 members. An FTA now operates in the COMESA region as from October 2000, including nine members. COMESA also envisages the establishment of a Common External Tariff by the year 2004. So far the rates of duty proposed are as follows:

- Raw Materials – 5 percent
- Capital goods – 0 percent
- Intermediate goods – 15 percent
- Final goods – 30 percent

All goods are freely traded between Mauritius and other COMESA members that have met the FTA commitments; Mauritius grants preferential treatment of 90 percent tariff reduction, on a reciprocal basis, on imports from COMESA members that are not yet parties to the FTA.

It is part of the country's trade policy to expand regional trade and to sign the MoU with neighbouring countries in different areas of trade and commerce, which are mutually beneficial.

Investment Policy

Investment policy measures have been guided by the need to give appropriate fiscal and monetary incentives in order to promote the different sectors and to support the trade policies. In general, a liberal investment policy has underpinned the economic development agenda. In fact, various incentive schemes have been set up over time and the most important ones are:

- Agricultural Development Scheme/Freight Rebate Scheme;
- Export Enterprise Scheme;
- Health Development Certificate Scheme;
- Hotel Management Scheme;
- Industrial Building Enterprise Scheme;
- Information and Communication Technology Scheme;
- Integrated Resort Scheme;
- Modernisation and Expansion Scheme;
- Pioneer Status Enterprise Scheme;
- Regional Development Certificate Scheme; and
- Technology Diffusion Scheme.

The incentives given under these schemes are broadly, tax rebates, companies paying corporation tax[34] of only 15 percent, dividends exempt from income tax, free repatriation of profits and capital, generous investment tax credits, investment and export finance at preferential interest rates and import duty exemptions on plant, machinery and raw materials. Though Mauritius performed reasonably well in the 1980s in attracting FDI, in the last decade net FDI flows have been quite erratic. One of the main reasons has been due to rising labour costs. In order to reverse the trend, the Board of Investment has been set up in March 2001 to act as a one-stop-shop for all investment. In fact, apart from some specific activities in the tourism sub-sector, acquisition of real state and activities under state monopoly, foreigners are free to invest in all areas.

Mauritius has consolidated its legislation on the development of its industrial sector, since 1993, with the Industrial Expansion Act, with a view to provide a new legal framework for industrial modernisation, transfer of technology, upgradation of SMEs, integration of non-EPZ sub-sectors into the EPZ sector, and for protection of the environment. Incentives granted under the schemes range from customs duty and VAT exemptions to a reduced corporate tax of 15 percent instead of the standard rate of 25 percent. Moreover, all industrial companies receive an initial investment allowance for machinery and equipment of 50 percent, and an additional 20 percent investment allowance annually for new machinery or equipment in the year the expenditure is incurred. Capital expenditure on environmental protection technology is eligible for a higher than average initial investment allowance. The Development Bank of Mauritius Ltd., grants long-term loans for the implementation of projects in various sectors. These loans carry interest at varied rates depending upon the nature of the project. Concessionary interest rates are normally charged for certain agricultural projects, micro-credits, and personal loan schemes. Industrial policy has been driven by the need to promote both local and foreign investment to assist the twin objectives of export-led growth and import-substitution.

In the 2006 budget speech, the Government recognises that the existing framework for doing business and its incentive system works against democratising the economy and competitiveness because the tariff, tax and labour laws favour large firms over SMEs, discriminate against new entrants in favour of the established firms. As such, except for a limited number of activities such as gambling and liquor sales, new measures will be introduced to allow entrepreneurs especially micro-enterprises and SMEs to start new activities within three working days compared to at

34 Initially, companies in the EPZ sector were given tax holidays for a ten-year period.

least 46 days currently and sometimes up to two years. The 2006/07 Budget mentions a series of measures designed to facilitate investment. These include, among others: getting rid of administrative delays *vis-à-vis* trade licences and development permits; facilitate foreign investment by establishing clears guidelines that allow starting up without government clearance; integrate the EPZ and non-EPZ sectors; do away with all investment certificates except for Integrated Resort Scheme and the Freeport; eliminate the discretion and powers of remission of the Minister of Finance; and have clear rules and regulations that will be enforced uniformly.

These measures indicate that the government is trying to harmonise investment in different sectors by creating a level playing field, and as such promoting free and fair competition in investment across sectors and industries. The actual system of corporate tax is a dual system of 15 and 25 percent. This tends to distort the economic environment and investment climate and also act as a severe impediment to the creation of a fully-integrated and competitive economy. The 2006/07 Budget announces the decision to move to a flat single rate of 15 percent in July 2009 such that all sectors and activities in the economy, including the Freeport, will pay the same corporate tax of 15 percent.

All the more, a series of new measures or existing ones reinforced with the objective to further promote the development of the SMEs. The Budget aims to promote greater synergy between large and small enterprises so that the latter could exploit outsourcing and sub-contracting opportunities. Moreover, to start a business, administrative constraints, including red tape and bureaucracy are being dealt with so that business permits can be issued within three working days. This will benefit both small and large enterprises and encourage more entry into different market segments. The institutions, which traditionally tend to support SMEs such as the Development Bank of Mauritius, Small Enterprises & Handicraft Development Authority (SEHDA), Enterprise Mauritius, State Investment Company and Mauritius Trading Houses etc., are being prompted to play a more pro-active role.

Training is also another issue, which is being seriously addressed. Consultants will be trained and placed at the disposal of SMEs. The Mauritius Employers Federation and the Human Resource Development Council have come up with a project on mentoring of SMEs with the involvement of a pool of businessmen and professionals. A tax holiday of four years is being granted to start SMEs. Another crucial factor for the promotion of SMEs is the production of quality products and services. In fact, this motto has been hailed as the linchpin to promote SMEs on a much higher growth path than they have known so far.

Government Procurement Policy

As far as Government Procurement is concerned, Mauritius is neither a member of, nor an observer to the WTO Plurilateral Agreement. In October 2000, a new Central Tender Board Act replaced existing legislation deemed stringent, administratively cumbersome, and difficult to implement. All 'public-purchasing' entities must notify the Central Tender Board (CTB), in writing, of any 'major contract' they intend to execute, and submit all the relevant documents to it. Within a reasonable delay after having been informed, the Board may call for tenders in respect of the contract. General guidelines on tendering procedures (including advertisement of calls for tenders in the local and, as appropriate, in the international press) have been issued by the Board. Under the guidelines, procurement of less than MUR500,000 (US$15,232) by ministries and government departments is allowed without reference to the CTB; purchases of MUR 500,000 (US$1.5232) or more (major contracts for ministries and government departments) must be made through the CTB.

Specific thresholds apply to procurement of civil engineering works and capital goods by government agencies and state-owned companies, depending on their activities: MUR10mn (US$304,611) for local authorities and certain parastatal bodies; and MUR25mn (US$716,601) for other parastatal bodies and state-owned companies. Decisions regarding procurement procedures are made by the CTB in consultation with the purchasing entity. There is no de jure prescription in this regard; the CTB is free to choose between open tenders, selective tenders, and direct purchases. In principle, only local firms and local agents of foreign suppliers are eligible for open tenders. Price preferences of up to 15 percent are granted to local suppliers when tenders are open to foreign firms. Where an international development agency is providing the financing, its own procurement guidelines (including provisions on preferential margins) apply. The legislation states that the acceptance of 'kick-back'[35] would render the person liable for a fine or a term of imprisonment. However, the operations of the CTB do not apply to the private sector.

Some of the major weaknesses of the current procurement legislation are the following:

- It describes which party tenders or purchases, but not how. There are no specific rules concerning the methods to be used in case of international donor financing and when to use various procurement methods and what to do in exceptional circumstances;

35 Agreement or understanding among contractors on which firm would submit the lowest tender for particular contracts.

- There is a lack of standardisation of the bidding documents;
- There is no public bid opening and publication of awards;
- Evaluation procedures are at times too general;
- There are no time limits for various actions; and
- There are no special rules on how to procure services of an intellectual and advisory nature.

Though the CTB Act and the Manual provide for more than one procurement method for tenders, there is not enough guidance as to what method of procurement is appropriate under what circumstances. As a result, there is too much discretion. The CTB Act 2000 is rigidly numerical: all contracts above MUR1mn (US$30,464) have to be tendered and reviewed by the CTB. A heavy workload combined with a general lack of support staff have prevented the CTB from concentrating fully on enforcement of the Central Tender Board Act 2000 and assertion of its authority.

With regards to the Financial Management Manual, it applies to low value procurement of the central government, i.e. to ministries and departments. In practice, the Manual's rules are widely extrapolated, and interpreted for low value procurement. For instance, the Manual basically leaves it up to an Accounting Officer of a Tender Committee to use direct purchase, selective tendering or open tendering as they deem fit. In addition, when a tender is estimated to value under MUR500,000 (US$15,232) but one bidder's bid exceeds this limit, the Manual provides that the tender be referred to the CTB.

In practice, this is seldom done, especially where referral of tenders between MUR500,000 (US$15,232) and MUR1mn (US$30,464) is a gray area. Though generally, for most projects it is open international/ national tendering, it is seen that there is a lack of procurement planning. Public bodies are said to utilise lack of planning and the ensuing year-end pressure to avoid open tendering in favour of selective tendering or direct contracting. As a result, the general public is entirely left in the dark as to the actual amount of public money spent on a given contract, although they may be able to get information on larger contracts that have attracted the attention of the Director of Audit, several years after the award.

The Government recognises that sometimes, excessively high and unjustified costs overruns on capital projects. The last budget speech mentions that ways to identify and bar dishonest contractors and suppliers from applying for government and public sector contract need to be devised. Moreover, the government intends to increase competition in bidding for government contracts and expand opportunities for SMEs to benefit. The 'Empowerment Programme' is designed to build the capacity of SMEs to participate and raise their standards and grading over time, thus increasing the pool of eligible contractors.

Wages Policy

The International Monetary Fund (IMF) in its country report study has repeatedly criticised the out-mode tri-partite wage negotiation process still in place in Mauritius. No government has been bold enough to change this wage determination process, fearing that in the short term, the political costs are too high. On one hand, relentless efforts are being made to propel the economy into high-value added, sophisticated niche production. On the other hand, the country is still burdened with a wage compensation policy, which is out of tune with a dynamic and forward-looking economy. Massive efforts and resources are being devoted towards attracting foreign investors to strengthen traditional economic pillars and give shape to budding sectors like ICT. While the fiscal, monetary and trade policies have been modernised with the aim of creating a more business-friendly environment, Mauritius is still saddled with an investment-unfriendly and rigid labour legislation and a system characterised by a high degree of state intervention. Yet, what should be recognised is that the only asset is the people.

The Industrial Relations Framework is an impediment to the maximisation of the potential of our human resources through, for instance, modern work practices such as multi-skilling, performance management systems based on productivity-related wage increases. The present wage determination system in Mauritius is not conducive to productivity improvement and long-term economic progress as it suffers from inherent weaknesses and rigidities. The system is fragmented and lacks coordination as organisations responsible for determination of wages and salaries in the public and private sectors operate quite independently. Sectoral productivity and economic performance are often not taken on board in the determination process. In view to achieving greater mobility and higher productivity and improved competitiveness in the economy, there is an urgent need to review the current wage and salary determination mechanism.

In the 2006-07 budget, the Minster has announced measures to reform the labour market which include linking wages to productivity, reduce the cost of releasing workers and integrating various labour markets into one regime with same rules and procedures for all. As such the present tri-partite mechanism for wage compensation will be abolished for wage compensation and will be replaced by the National Wage Council, which will ensure that wages and compensation are linked to productivity and capacity to pay. Moreover, there will be reforms in labour laws and regulations in order to achieve flexibility needed to create demand for labour together with security needed to protect workers as they switch across jobs. These measures will help to promote productivity and enhance competitiveness across the

economy. Besides, firms, including small ones will face fewer difficulties in hiring and firing workers.

Industrial Policy

The Government, since the structural adjustment period, has always considered the promotion of SMEs. In fact, with directed credit programmes and interest rates regime in the early 1980s, many small farmers and small entrepreneurs, would not meet the lending criteria required by commercial banks. Therefore, appropriate schemes were set up under the Development Bank of Mauritius to finance such projects, usually at subsidised interest rates. The objective was not only to promote self-employment but also to tap all opportunities to reduce the relatively high rate of unemployment prevailing. In fact, SMEs have been generating a higher number of jobs than large enterprises. Over the years 1990-2003, employment generation by SMEs increased annually at the pace of three percent as opposed to the meagre 0.3 percent for large enterprises.

However, it is important to recognise the vulnerability of SMEs which are hampered by poor management and marketing structures. As a result, many are not financially sustainable ventures. The report on the 'Proposal for a New Incentive Framework for SMEs' (2001) identifies some general and internal constraints faced by SMEs including access to credit facilities, as SMEs are discriminated against large enterprises in loan applications, because of collateral requirements, lack of general policy, insufficient provision of business development services, international competition, and lack of forward and backward linkages.

The Government set up the Small Industries Development Organisation (SIDO), which in 1994 became Small and Medium Industries Development Organisation (SMIDO). The objective was to provide direct support to small and medium enterprises in upgrading managerial, technical, and marketing skills. The SMIDO provides several incentives and support schemes such as export credit guarantee schemes, export assistance schemes, start-up schemes, business counseling and training and consultancy as well as feasibility studies. The government has also extended fiscal incentives including the abolition of custom duties on raw materials, reduction in corporate tax to 15 percent to all manufacturing companies and all fiscally promoted companies, tax exemptions on dividends, 25 percent investment allowance, free repatriation of capital as well as 10 percent investment relief.

Market and Competition

This section analyses the state of competition in different sectors of the Mauritian economy that have evolved through time. It shows how competition has been gradually introduced in some sectors such as telecommunications, while others such as the banking sector remain very concentrated.

Market Concentration in Mauritius

In a small economy like Mauritius, one would expect the market concentration to be higher on average than a larger economy as a certain minimum scale of operation must be achieved to obtain acceptably low unit production costs. Moreover, a notable feature of the Mauritian economy is the concentration of economic powers in the hands of a small number of enterprise groups, most of them family-controlled. The operations of these large, extensively diversified companies have a pervasive influence on the commercial and industrial development of the island. However, judging the extent of competition on static data as number of firms in the market, and market share is not entirely correct. An important concept related to the analysis of the competitiveness of a market relies in assessing its contestability. It is to be noted that it is relatively easy for firms to enter many private sector activities in Mauritius especially those operations, which are small-scale and labour-intensive.

Upon the request of the Government of Mauritius, the UNCTAD Secretariat, with the cooperation of the Ministry of Economic Planning and Development, engaged a high-level expert from Australia who undertook a study related to market concentration and restrictive business practices in Mauritius, in the year 1995. The study found that market concentration exists in many sectors and certain types of restrictive business practices also occur. A high degree of market concentration was found in the following industries:

- Public utilities including telecommunications, electricity (excluding generation), radio and television broadcasting and air transport (airlines and airports operations);
- In beer manufacture, tobacco products, flour, fertiliser, pharmaceutical products, edible oils, livestock feed, paint, soft drinks and poultry;
- Import and distribution of cement (the sole private importer and distributor is a consortium of local and foreign investors);
- In the importation of petroleum products (a monopoly of the State Trading Corporation); and
- In services such as commercial banking, equipment leasing and car rental and duty free shopping.

Businesses surveyed for the study were especially concerned at the high prices and/or poor quality of key services in airfreight, telecommunications, and insurance and attributed this to lack of competition. The introduction of a competition law could be especially beneficial in the services sector, which

accounts for over 60 percent of the GDP, and in the supply of some intermediate goods for business. Greater openness to new entrants in highly concentrated industries could attract new FDI that will be beneficial for the competitiveness of the economy (UNCTAD, 2000 Investment Policy Review). Ten years later, market concentration can still be observed in the above-mentioned sectors, despite some efforts to liberalise the telecommunication sector.

The liberalisation of retail prices started in the early 1980s. However, price controls based on a fixed maximum price system and a maximum percentage markup system are also maintained on some strategic products such as flour, rice, cement, pharmaceutical products, and so on. The re-introduction of a maximum percentage markup on import of milk was recently criticised by the private sector. Indeed if a competition law was operational, such controls might not necessarily be needed.

In order to understand the present level of competition in the domestic markets, two important factors must be taken into account: first, the process of economic development in Mauritius; and second, the peculiarities of a small island developing state. The owners of the sugar industry, benefiting from the boom years of that industry in the early 1970s, were the major investors in different sectors of the local economy. Moreover, two important aspects of the local market are: its smallness in terms of demand and the fact that importers face high costs of freight and transport; and given the faraway location from major international markets. Therefore, for the local market, the minimum efficient scale is often reached with a low number of firms and this is characteristic of many sectors in domestic markets. However, with significant reforms of the external tariff regimes, local producers are facing more and more competition from imported substitutes. There are also several factors, which help to promote competition in the domestic markets, including:

- the liberalisation of current account and capital account transactions has encouraged the entry of overseas-owned companies into several activities such as construction, grocery, wholesaling and retailing;
- the number of goods subject to government regulation of maximum prices or maximum permissible mark-up has declined;
- the State Trading Corporation (STC) has become a direct competitor of private sector enterprises by diversifying its activities into other commodities besides the imports of petrol and cement;
- strong brand preferences on the part of some consumers favouring imported products; and
- the risk that a new entrant will come into the market may also force an existing monopoly to maintain its efficiency and avoid raising prices.

Competition is weak or non-existent in some important service industries. Public monopolies are responsible for the provision of traditional public utility services such as electricity, water supply. Some efforts have been made recently in liberalising the telecommunication sector with the entry of an additional provider of fixed line facilities.

The number of small units covered in the Republic of Mauritius during the first phase 2002 was 75,267. Of these 60.6 percent (45,586) were establishments and the remaining 39.4 percent (29,681) consisted of itinerant units. The majority, 82.0 percent (61,681), of the units was involved in four major activity groups: 39.8 percent in 'Wholesale and Retail Trade; repair of motor vehicles, motorcycles, personal and household goods; 15.8 percent in 'Manufacturing', 15.4 percent in 'Transport, Storage and Communication; and 11.0 percent in 'Construction'. The total value of goods and services produced or gross output at basic prices, in 2002 by the small units, amounted to MUR29,596mn (US$901mn). Investment made by the small units represented around 5.2 percent of Gross Domestic Fixed Capital Formation MUR31,549mn (US$961mn). The two activity groups 'Wholesale and Retail Trade; repair of motor vehicles, motorcycles, personal and household goods', and 'Transport, Storage and Communication', together accounted for MUR1,199mn (US$36.5mn) or 73 percent of the total investment incurred by the small productive units.

It is observed that the units were almost equally distributed in rural and urban regions. However, the following activities were predominant in the urban region: 'Real estate, Renting and Business Activities' (75.4 percent), 'Financial Intermediation' (70 percent), 'Health and Social Work' (73.4 percent).

The Role of State-owned Enterprises and Parastatals

The share of the entire public sector, i.e. SoEs and central and local government services, in the GDP is around 24 percent. SoEs contribute almost 100 percent of the water output, around 60 percent of electricity production and, about half of the total production in transport and communications and about a fifth in finance and related activities. SoEs account for some 23 percent of gross domestic investment. They employ about 4.5 percent of the total labour force and around 16.8 percent for the entire public sector.

Several parastatal bodies purchase, import, and store 'strategic products', including commodities subject

to price control and/or supply certain services. The STC, with a turnover of around MUR6bn[36] (US$182.7mn), imports the whole of the island's requirements for petroleum products, flour and ration rice (rice with 25 percent broken)[37], and 50 percent of cement requirements. These products are considered as 'essential' goods for which regularity and reliability of supply must be assured. The authorities also justify the STC's monopoly, citing the sustainable quantities of the goods it enables Mauritius to import and the resultant cheap prices (due to bulk purchases) that the STC obtains from foreign suppliers. STC sells the staple food e.g. flour, ration rice to private wholesalers and bakers, who then distribute the products to retailers. The retail prices of ration rice and flour are subsidised. Imports of 'luxury' (Basmati) rice were liberalised in 1997. Therefore, the monopoly formerly held by STC over the importation of this product has been abolished. Currently, the STC competes with private traders in the importation of Basmati rice. As for cement, the Mauritius Portland Cement Company (MPCC), and the Ciments de l'Océan Indien Limitée (since 2000) import 50 percent of Mauritius' requirements for cement; the STC's import price serves as the basis for the local price. Petroleum products are sold by STC to local distributors at a set price, with price controls maintained along the distribution chain.

The Agricultural Marketing Board (AMB) still holds a monopoly over, or still monitors, the importation and/or marketing of the main controlled agricultural products, such as table potatoes, onions and garlic, and maize, turmeric, and cardamom. Other parastatal bodies through which the state intervenes in economic activities e.g., bodies that market or supply products or services include the Tea Board, the Tobacco Board, the Mauritius Meat Authority, the Central Electricity Board, the Central Water Authority, the Waste Water Authority, the Development Works Corporation, the National Transport Corporation, Air Mauritius, the Sugar Bulk Terminal Corporation, the Cargo Handling Corporation, the Mauritius Freeport Authority, the State Investment Corporation.

The Mauritius Sugar Syndicate (a private association) is in charge of sugar marketing, including export, in Mauritius. The State Investment Corporation Limited (SIC) is the government's main investment arm. It invests in sectors considered to be of strategic importance for the socio-economic development of the country, and participates in the equity capital of selected pioneering enterprises, and does not benefit in any preferential regime. It is incorporated under the Companies Act, operates along commercial lines and is subject, like any company, to taxation and other statutory and fiduciary obligations.

Sectoral Analysis of Competition

Telecommunications

Mauritius brought forward the commitment it took with the WTO to open up its telecommunication market in January 2003. This included the ending of all monopoly rights in domestic and international telecommunication services. Mauritius Telecom is the primary supplier of telecommunication services in Mauritius[38]. It was established in 1992 following a merger between Mauritius Telecommunication Services and Overseas Telecommunication Services. The other domestic player is Emtel Limited providing mobile phones. Emtel Limited shares the mobile-phone market with Cell Plus, which is a subsidiary of Mauritius Telecom. The Telecommunications Act 1998[39] has divided the industry into three main players: the operators; Mauritius Telecom and Emtel; and a regulatory body, i.e. the Information Communication and Technology Authority). On November 24, 2000, MT entered into a strategic partnership with France Telecom, where the Government sold 40 percent of its stake in MT for MUR8.6bn (US$261mn). Of the remaining 60 percent, the State Bank of Mauritius (SBM) owns 19 percent, the employees of MT, one percent, and the Government, 40 percent. The local tariffs structure was not changed till 2002. In fact, there has even been a 15 percent reduction with the introduction of 'billing by seconds' in December 1997. It is the turnover from overseas calls, which used to compensate for the shortfall on the local market. However, as from October 01, 2002, the domestic tariff has been increased by an average of 30 percent given that international tariffs have been reduced by 50 to 60 percent.

Any revision in tariffs must be submitted by MT to the ICTA, which will then consider the request before making its recommendations. The ICTA also has the important task of granting licences to new players in the telecommunications industry. Moreover, new firms coming in the market will most probably in the short term use the existing network established by Mauritius Telecom and as a result they will have to pay a connection rate to MT, which will directly influence their tariffs. The ICTA has the important task of ensuring that the connection rate set by MT does not affect the level playing field and as a result keep competitors out of the market. It is being argued that the connection rate is still too high.

36 STC employs 290 persons. Its turnover is estimated at MAU 6.6 billion, its total purchases at MAU5.9 billion, and its value-added to the economy at MAU 700 million for 2000-01.
37 The vast majority of imported rice (two thirds of domestic consumption).
38 Mauritius has the highest tele-density among SADC countries and MT is connected to the SAFE network.
39 It has been superseded by the Information Communication and Technology Act 2001.

As from the end of January 2006, Mauritius Telecom no longer has monopoly position in the provision of fixed line operations. A new player, Mahangar Telephone Mauritius Limited (MTML) has started its operations. It is expected that its tariffs will be lower than those practiced by MT. However, as far as international calls are concerned, the tariff practiced by Data Communications Limited is the lowest (from MUR9.40 to 7.20 per minute) compared to, from MUR 10.80 and 9.60 for MT. As regards to ADSL Internet connection rate, the latter has been reduced by around 33 percent recently, but it has been observed that the operators have not yet adjusted their tariffs downwards. Overall, with MTML on the market, it is expected that there will be more competition and tariffs will come down for the benefit of consumers.

Electricity

Electricity in Mauritius is generated from three main sources: hydropower; diesel/gas turbines; and coal/bagasse generators. The Central Electricity Board (CEB) currently accounts for around 58 percent of the total production. The balance is produced by the Independent Power Producers (IPPs), from bagasse of the sugar factories. The Bagasse Energy Development Programme initiated in 1991, is today considered as a major success of the government's objective of diversifying the source for the production of electricity. The CEB has monopoly position with respect to transmission and distribution. The first step towards the privatisation of CEB is 'corporatisation', i.e. making the CEB becomes a private company under company law. To that effect, the 'CEB Transfer Bill' will be passed in Parliament. The next stage will be to open the market with respect to electricity generation to competition.

The CEB has and will have power purchase agreements with the Independent Power Producers (IPPs). The purchase agreements will be monitored and approved by the new regulatory body, the Utility Regulatory Authority. It is presently being claimed however, that the purchase price from the IPPs is too high, which finally gets passed onto consumers in terms of higher tariffs. A consultancy report entitled 'Audit of Optimal Generation Capacities' by a South African firm, PB Power, concludes that the purchase price per KWh from the IPPs should be around MUR1.20, instead of MUR1.87 and makes it clear that the price being paid by the CEB is too high. The report also states that a fixed quantum of electricity must be purchased from the IPPs irrespective of the fact that the CEB own generators are as a result being under utilised (Institute of Consumer Protection, 2002).

With the continuous increase in the price of petroleum products and the bad financial position of the CEB, the latter is considering various options, which are both short term and medium term. These are:

To review the purchase price of electricity from the IPPs so as to bring it more in line with CEB's own cost of production. It is argued that the CEB is paying at least one rupee above what they should be paying to the IPPS per KWh of electricity purchased. The government is fully supportive of this re-negotiation of the contracts with the IPPs, though the latter are quite unwilling. Given the trends in the price of oil, it seems most probable, that they will get back to the negotiation table.

To diversify the source of supplies for the production of electricity, considering using more charcoal where price volatility is much lesser and bagasse and using wind energy.

To improve operating efficiency and financial management at the CEB, particularly relating to purchase of parts and management of contracts. In fact, the CEB has plans to set up a contract management unit in the near future.

Water

In March 1999, the Government requested the Central Water Authority (CWA) to enter into an agreement with a private undertaking with proven experience in the water sector with a view to concluding a long-term strategic partnership for the modernisation and development of the water sector. The terms of reference provided for a management contract during Stage One and followed by a long-term strategic partnership of 30 years during Stage Two. The main criteria for selection of the best offer, was the supply of potable water at the consumer's tap on a 24-hour basis at a competitive rate. Other criteria included the proposals for the transfer of technology and technical know-how and investments in the water supply infrastructure, assisting the CWA in improving its financial viability, and improving the level of service to customers. The CWA concluded that the best offer was from Consortium Suez Lyonnaise des Eaux/Vivendi. In August 1999, the CWA entered into an agreement with the Consortium for a pilot stage of six months from September 1999 to February 2000, which was renewed until December 2000.

When the Consortium was queried about the source of their investment of about MUR6bn (US$182.7mn) in our water sector, to the astonishment of the government and other parties concerned, the claim was, they were going to raise the money from the local market by a progressive increase in tariffs and from 'soft' government loans. This has turned out not to be acceptable.

The Government sought the views of the International Finance Corporation (IFC) to advise on the modalities of the long-term partnership agreement, given the lack

of expertise in terms of concession agreements. In July 2000, the IFC said that it would not have advised in favour of adopting the approach that has been taken. Also a United Nations Development Programme (UNDP) consultant advised that the financial structure of the project was extremely favourable to the Consortium and there was a need to completely redraft the concession agreement. As expected, the contact for Stage One was terminated and the Consortium was not allowed to proceed to Stage Two.

Cargo Handling

Given the strategic location of Mauritius, there is a great opportunity to substantially increase transhipment activities from the Far East countries to Africa via Mauritius. However, for that to be achievable, the Cargo Handling Corporation (CHC) must in the first place seek a partner with an international reputation. The CHC is currently in the process of privatisation and the government is considering selling 40 percent of its equity to a strategic partner. Other reasons to have a strategic partner can be to increase the capital of CHC, as the port will also need significant investment for its state-of-the-art plant and equipment, if it is to increase its operating activity substantially – besides transferring technology and know-how. It is being proposed that 140 percent of state investment in the CHC be sold to the strategic partner.

Construction and the Cement Industry

Three of the leading enterprise groups in Mauritius – The Rogers Group, the Espitalier Noel Group, and the Hand Group – are shareholders in a major construction company REIHM–GRINAKER Construction. While considerable capital is required to establish a successful construction company capable of tendering for very large projects, regulatory barriers to the entry of new firms seem relatively low. Although the market structure may be conducive to competition, the possible existence of restrictive business practices in the industry may inhibit the same, leading perhaps to higher tender prices and reduced efficiency in some individual firms. There is a probability of bid-rigging in this sector.

A monopoly to import and distribute cement was in the hands of the privately owned Mauritius Portland Cement Co. Ltd from 1957. However, in 1984, the government decided that the STC should take over the importation of 25 percent of the country's cement requirement and in the following year the STC share of import was raised to 50 percent. At present, the STC remains responsible for 50 percent of cement imports, which it obtains through annual tenders. These imports are then sold back to the Mauritius Portland Cement Company (MPCC) for distribution. The Ministry of Commerce fixes the maximum prices for cement.

Tourism and Air Transport

FDI policy towards the tourism sector is quite restrictive. The government became concerned about the fact that over-capacity in hotel rooms was developing. It introduced restrictions on new investment that fell more heavily on foreign than national investors. About 100 percent foreign ownership of new developments was permitted only for hotels of more than 100 rooms. Foreign participation in smaller hotels was restricted to 49 percent. There is no FDI restriction for hotel management companies. The remainder of the tourist sector is almost entirely reserved for national investors. Foreign participation in restaurant operations is limited to 49 percent and only where investment exceeds MUR10mn (US$304,641), which would be a rare occurrence. No foreign investment is permitted in travel agencies, tour operators, tourist guides, car rental, yacht charters, and duty-free shops.

Despite fears of over-capacity, tourism has grown rapidly and there has been significant investment in new hotels by both national and foreign investors. Approximately 40 percent of the 25 larger hotels (with more than 100 rooms) are partly foreign-owned. Most major restaurants and car rental chains are represented through franchises or agencies. According to the final report on the Master Plan for Air Transport in Mauritius (2004), stagnation in the tourism industry has been observed. In addition, hotel occupancy rates are declining, but rates have increased significantly in recent years. This raises the question whether there is substantial competition among hotels.

Also among the other contributors to the tourism product, the airlines, there is limited competition. Although at key routes there is, besides Air Mauritius, a second carrier from the counter part state, these two carriers mostly operate in code share and other agreements with each other. The report recommends that air access policy be liberalised in a step-by-step manner. All the more, it advocates for the government to ensure that the market structure between hotels be competitive in order to meet challenges from other competing destinations including Seychelles, Dubai, etc. It is to be noted that the Government of Mauritius is at present the major shareholder (51 percent) of Air Mauritius Company Ltd. Other shareholders are private and foreign companies. Local private firms include Rogers Company Ltd and the employees of Air Mauritius. Foreign shareholders include British Airways, Air France, and Air India. The company is also quoted on the official market of the Stock Exchange.

In order to achieve the goal of two million tourists by the year 2015, the Government has decided in the last budget to continue opening up air access to increase

the carrying capacity, diversify the sources of visitors and bring down travel cost to Mauritius through greater competition.

Financial Sector

The overall strategy of financial liberalisation pursued in the economy since the late 1980s has been based on the premise that market forces lead to a more efficient pricing, mobilisation, and allocation of financial resources. Diversification and internationalisation of the financial sector are the major objectives of policy makers. The development of the financial sector is a continuous process of institutional changes and policy shifts in order to promote business activities in the financial services industry, maintain public and international reputation confidence. The use of information technology in the financial services industry has significantly improved the competitiveness of financial services organisations.

Banking Sector – There are currently 11 commercial banks in Mauritius. However, there is evidence that the market is highly concentrated with the two largest banks namely: the Mauritius Commercial Bank and State Bank of Mauritius, accounting for 70 percent of the market. New legislations namely, Banking Act 2004 and Bank of Mauritius Act 2004 have consolidated the legal order to create the legal framework in order to modernise and increase competition in the banking industry; regulate risks; supervise new activities generated by e-banking and ensure the protection of bank customer. There are various complaints from customers with respect to bank charges.

Far from being a contestable market, there are many barriers to entry such as high capital requirements, goodwill and others. With development of money markets, increasing use of open market operations, fostering of deposit taking institutions and enhancing the financial infrastructure, there is a lot of scope for enhancing competition. The major innovations in the recent Banking Act are the provision for a deposit insurance scheme to protect customers, appointment of an ombudsperson to deal with complaint and prohibiting mergers between financial institutions that might not be in the public interest, the need for approval of the central bank for significant transfer of ownership, composition of board of directors, provisions of information on monetary policy committees, and establishment of a credit bureau.

Table 5.2: Summary of Means of Market Shares (1983-2002)

Banks	Market share (as measured by deposits)	Market share (as measured by loans)
MCB	0.41	0.43
Baroda	0.03	0.02
IOIB	0.03	0.02
SBM	0.30	0.27
Barclays	0.08	0.07
Habib	0.01	0.007
HSBC	0.08	0.09
SEAB	0.01	0.008
Delphis	0.01	0.01
MCCB	0.01	0.009
BNPI	0.04	0.04
UIBL	0.0043	0.006
Means	0.083	.0083

(Source: Author's calculation)

Good governance and international competition are expected to reduce concentration in the Mauritian banking sector and increase efficiency for the benefit of customers. It is to be noted that the financial sector is one, which is included in the schedule of commitments of the General Agreement on Trade in Services (GATS). The Mauritian banking industry consists of 10 commercial banks and this number has varied considerably over the years with the consolidation processes. A simple analysis of bank market shares, both in terms of deposits that they hold in the deposits market or in terms of loans that they share in the loan market, shows that such a distribution is rather skewed towards two large banks (MCB and SBM) that control over 70 percent of the total output.

A summary of the means (1983-2002) calculated confirms that over the years, the two banks MCB and SBM, have been dominating the entire market with values 0.41 and 0.28 respectively, when measured by deposits, 0.43 and 0.27 respectively, as measured by loans. Such findings are striking facts in our markets, as disparities in market shares have been rather the same over the years (refer table 5.2).

An analysis of market concentration of banks shows a clear case of monopolistic competition in the banking market with two largest banks controlling the whole market.

Insurance Sector – The insurance sector is also characterised by heavy market concentration with three companies e.g. SICOM, Anglo-Mauritius, and Island-Insurance holding the major share of the market. There are also barriers to entry in terms of first-mover advantage, economies of scale and so on. Moreover, it has been reported that in certain

Table 5.3: Levels of Market Concentration (1983-2002)				
Years	**Output Measurement: Deposits**		**Output Measurement: Loans**	
	Herfindahl-Hershman (HH)	2 bank Concentration	Herfindahl-Hershman (HH)	2 bank Concentration
	index	Ratio (CR)	index	Ratio (CR)
1983	0.2308	0.6179	0.2567	0.6736
1990	0.2368	0.6457	0.2699	0.7040
1995	0.2699	0.6988	0.2860	0.7130
2000	0.2679	0.6779	0.3308	0.7720
2001	0.3100	0.7315	0.3820	0.8250
2002	0.2954	0.6948	0.3082	0.5080
Means	0.2696	0.6909	0.2881	0.7020
Source: Author's calculation				

instances, when contracting loans, banks propose to clients the taking of insurance cover from certain sister companies. The Financial Services Commission (FSC) regulates insurance activity and protects the interests of consumers. It is a member of insurance securities and non-bank financial authorities (CISNA). It has also signed a number of MoUs for the exchange of information and surveillance to enhance supervisory regime of the non-banking activity in the SADC.

The FSC has come up with a code of business conduct to sets standards of market practices for insurers and insurance intermediaries in relation to the sale of insurance contracts. The code aims to ensure that all insurers and intermediaries under the supervision of the FSC adhere to high standards of financial soundness and business conduct. In essence, it reflects what the FSC considers are minimum standards of good business practice and ethical behaviour on behalf of its licencees. The code also caters to the consumers' interests, including their fair treatment. Standards have been developed that require service providers to act conscientiously, honestly and with diligence in handling insurance business; to ensure that consumers are properly informed and that their claims and complaints are handled effectively.

Two insurance companies started their operations in Mauritius back in the late 1950's and since then the insurance industry has proved to be a prospective business over time. The insurance industry is classified as either Long term Insurances, which provide life assurances and pensions funds. The other type is General Business, which specialises in fire, motor, personal accident and transport insurance. Another type of insurance, which is gaining prominence, is the reinsurance sector where insurance companies reinsure themselves against risks. Out of the 20 existing companies, New India Assurance Company and the Life Insurance Corporation (LIC) of India are local branches of Indian companies, while the Ceylincostella insurance company is a subsidiary of the Sri Lankan Company.

Long-term insurance is a dominating market in Mauritius – Sicom, Anglo-Maurituis, and British American specialise in specific segments of the market. For example, SICOM's main business is that of pension funds of statutory bodies while the British American mainly markets low premium insurance to low-income households. The General Insurance Business comprise fire, motor, personal accident, transport and miscellaneous insurance. Motor insurance accounts for nearly 45 percent of premiums out of general insurance companies in Mauritius. This share continues to rise with time, along with that of fire and miscellaneous classes. Other products offered by insurance companies are: personal accident insurances, children health policy, various pension plans or the BA Lady policy of the British American insurance.

An analysis of market concentration over the years shows a mean HH value of 0.295 and for the concentration ratio, it is 0.765 (refer table 5.4). The latter implies that four largest insurance companies namely, Anglo-Mauritius, SICOM and BAI dominate the market. The HH index implies that the market

Table 5.4: Market Concentration of General Insurance Business (1995-2003)										
Years 1994	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**Means**
Herfindahl-Hershman index	0.250	0.295	0.265	0.285	0.321	0.325	0.296	0.258	0.963	0.295
3 firm concentration	0.725	0.702	0.698	0.725	0.698	0.714	0.7154	0.702	0.687	0.765
Source: Computed										

shows a monopolistic tendency and monopoly is rejected. The largest companies in this line of business are the Swan group followed by Albatross, Mauritius Union, and SICOM. These together account for more than 50 percent of the market in the sample. These market shares in line of business indicate that each firm has economies of scale in a particular product.

Agricultural Sector

With the removal of trade preferences, the sugar industry has undergone major structural reforms with many factories closing down. Sugar production has become concentrated in the hands of a few large sugar mills. These are Mont-Desert-Alma, FUEL and that of Belle-Vue. This economic concentration is supposed to cut down cost and benefit from economies of scale especially in light with developments regarding the erosion of preferences in the context of the WTO. This can be seen by analysing data from the Mauritius Sugar Industry Research Institute (MSIRI) both from the number of planters as well as production. In 2003, production from these three factories amounted to 410,000 tonnes in a total of 645,000 tonnes produced.

The oligopolistic tendency in sugar production in the country has increased given the policies adopted by the government namely that of the Voluntary Retirement Scheme, especially designed for the small planters in the country. As for food crops (vegetables) there is a lack of competition in the sense that production power is concentrated. 60 percent of the market is taken over by five largest producers (MSIRI annual report, 2003). Tea production is also in the hands of a few large producers such as Corson and La Chartreuse. Consequently, the price can ultimately suffer. There is a need to democratise the market so that small producers also gain in the production process.

Wholesale and Retail Trade Sector

Wholesale and retail distribution is a large and important sector of the economy accounting for about 11 percent of the GDP in recent years and employing about 70,000 people in 2004. The rise in real income in Mauritius has attracted many foreign investors in the retail sector with Courts Ltd., as the first operator to enter the domestic market and supply furniture and household appliances. The hire purchase facility was popularised with the coming of that foreign company. Later, many other large foreign hypermarkets have come into Mauritius as investors or through franchises. They include Jumbo stores, Shoprite, Spar and Game, Kentucky Fried Chicken, MacDonald, Spur among others. Following these developments, the distribution sector seemed to be characterised by large hypermarkets which are largely foreign-owned; supermarkets and large self-service stores, which are local family-owned belonging to one of the conglomerates and the traditional street corner shops which are mostly present in rural areas. The competitive nature of the sector has resulted in many developments including the setting up of mid-sized stores in order to benefit from economies of scale such as when undertaking bulk-buying as with big hypermarkets. Consumers have also benefited from lower prices and wider choices, (MCCI Publications, 2005).

However, a recent article by the Institute for Consumer Protection (August 2005) highlighted the fact that some foreign companies have brought with them anticompetitive practices in particular backdoor commercial practices including selling specific locations on gondolas, advertising space on trolleys and on brochures. Such activities bring in a significant amount of money and allow hypermarkets to offer certain fast-moving products below cost price. Such a practice, known as la marge arriere in France, allow firms to capture a large market share and drive other enterprises out of business and afterwards they increase prices after achieving a dominant position in the market.

Perspectives on Competition

Overall, around 92 percent of the respondents considered that anticompetitive practices are quite prevalent in the Mauritian markets. At the dis-aggregated level, the results are quite similar with 92 percent of consumers, around 93 percent of firms and 90 percent of government institutions, who participated in the survey agreeing that such practices are widespread in Mauritian markets. 94 percent of the respondents do agree that consumers are adversely affected by such practices.

Table 5.5: Market Concentration of Long-term Insurance Business over the Years (1995-2003)

Years 1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Means
Herfindahl-Hershman index	0.258	0.258	0.269	0.289	0.378	0.369	0.258	0.298	0.298	0.285
Three firm concentration	0.695	0.702	0.714	0.745	0.754	0.798	0.748	0.702	0.768	0.754

Source: Computed

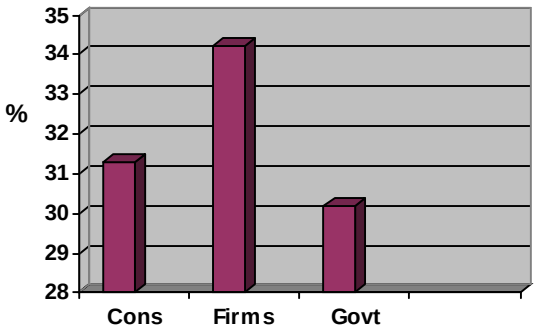
The participants were also given 11 categories of anticompetitive practices, namely:

1) collective price fixing;
2) market sharing;
3) bid-rigging;
4) tied-selling;
5) exclusive dealing;
6) concerted refusal to deal;
7) resale price maintenance;
8) price discrimination;
9) entry barrier;
10) predatory pricing; and
11) any other.

They were required to list the three most important ones by order of importance.

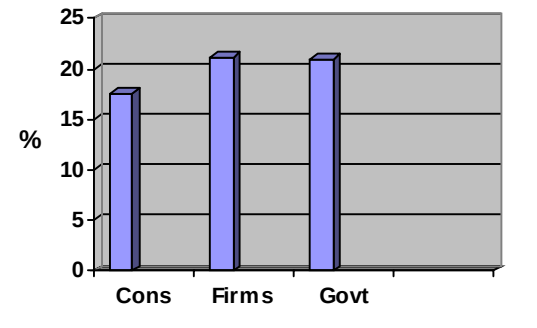
Six percent of the total sample considered *price fixing* as the most prevalent anticompetitive practice in Mauritian markets. When the results are disaggregated by category, consumers share this view along with the private sector and the government, ranging from 30 to 34 percent as can be observed from the figure 5.1.

Figure 5.1: Prevalence of Price-fixing according to Respondent Groups



The second most prevalent anticompetitive practice is *market sharing*, according to the respondents (17 percent). From the disaggregated results, the same response is observed for consumers (17.5 percent) and the government sector (20.9 percent). But according to the private sector, it is exclusive dealing (21.1 percent). This is shown in figure 5.2.

Figure 5.2: Prevalence of Market Sharing according to Respondent Groups



Entry barrier is seen as the third most prevalent anticompetitive practice for the whole sample (18.5 percent). Firms and the government, 24.3 percent and 20.9 percent respectively, give the same responses. However, according to consumers, it is resale price maintenance (19 percent).

Overall, the survey results tend to confirm collective price fixing, market sharing and entry barriers as the most common factors affecting competition in the Mauritian markets. This is not surprising given that many markets in Mauritius exhibit oligopolistic characteristics where entry barriers are high and with some form of collective price fixing through price leadership. However, from the survey we see that bid-rigging, resale price maintenance and price discrimination are also important factors affecting competition.

Most Prevalent Anticompetitive Practices

At the local level the overall results show that collective price fixing (36.8 percent) is the most prevalent anticompetitive practice. The same is observed for all three categories, ranging from 25 percent to 39.7 percent. The second most prevalent is resale price maintenance (20.7 percent). Consumers share this response as well (24.7 percent). However, for the government and private sector, it is market sharing, 19 to 22.2 Percent. The third most widespread practice is price discrimination for the whole sample (15.5 percent). Most consumers also share this view (21.9 percent). However, for the private sector and the government, it is entry barrier (20 percent) and resale price maintenance (20 percent), respectively. The response by consumers that price discrimination is prevalent in different parts of the country is not surprising, given that there is significant market segmentation particularly in the retail sector.

At the national level, bid-rigging is observed as the most prevalent anticompetitive practice (23 percent). From the disaggregated results, consumers give the same response (25.3 percent. However, for firms and the government sector, it is collective price fixing, 30.6 percent and 22 percent respectively. The number of consumers participating in the sample might have influenced the overall result here. Taking this into account, the results confirmed the earlier results obtained that collective price-fixing is most prevalent.

The second most important anticompetitive practice at the national level is market sharing (19.6 percent). The same result is confirmed by all three categories. The third most important practice is entry barrier (14.8 percent). The private sector and the government, 22.9 percent to 16.7 percent, give the same response. For consumers they consider exclusive dealing as the third most prevalent, 17.1 percent.

Overall, the survey confirms that in the Mauritian markets at both the local level and at the national level, the three most anticompetitive practices are: collective price-fixing; market sharing; and entry barrier and to a marginally lesser extent, bid-rigging and price discrimination. The results at the local and national level support the findings regarding anticompetitive practices in Mauritian markets.

Table 5.6: Response to the Question on Whether Action is Taken if Rules against Anticompetitive Practices are Violated

	Sector		
In percent	**Consumer**	**Private**	**Government**
Yes, always	7.7	17.1	29.2
Yes, sometimes	76.9	51.4	33.3
No	15.4	31.4	37.5

Source: Computed

The first most important sector where such practices are prevalent is the consumer goods sector (35.2 percent). The consumers and the private sector, 38.7 percent and 42.9 percent respectively, also shares this view. But according to the government sector, it is services, which is most affected. The second most important sector is manufacturing (22.4 percent). Consumers and the government sector confirm this with 25.3 percent and 21.9 percent respectively. For the private sector, it is the construction industry, 28 percent. This is expected as views have been expressed that there is considerable bid-rigging in this sector. The third sector where such practices are prevalent is agriculture. This response is shared by consumers, but not by the private sector and the government.

Around 63 percent of the respondents agree that some of such practices originate outside the country. At the disaggregated level, it is not surprising the private sector and the government seem to apportion most of these practices to multinational corporations than to locally based firms with around 67 and 86 percent, respectively. On the other hand, consumers allocate the practices as 56 percent overseas and around 44 percent home-based. So for consumers, many of these practices originate from the local business environment.

Views of Respondents with Regard to the Legislature

It is surprisingly to note that only about 56.8 percent are aware that there are laws and regulations to check anticompetitive practices. The consumers' group might influence this result, where only 50 percent are aware of such laws and regulations. For the private sector and government 77 and 65 percent are aware of such laws and regulations.

As far as actions taken when such laws are violated, around 67 percent of the total sample point out that actions to sanction such practices are taken sometimes only. The dis-aggregated results for the three groups show that whilst only 15 percent of consumers state that 'no action' is taken, a greater percentage of the private sector (31.4 percent) and the public sector (37.5 percent) believe that no action is taken if the rules are violated Table 5.6.

From the survey, it seems that consumers are aware of the most important legislations, which exist to check such practices, namely the Consumer Protection Act (44.4 percent), the Fair Trading Act (37.8 percent) and the Hire Purchase Act (11.1 percent). Thus there could be practical difficulties for them to seek remedies, as awareness of the legislation does not seem to be an issue. The present framework for consumers and other stakeholders to address their complaints / grievances most probably must be revisited.

Table 5.7: Response to Adequacy of Existing Laws and Regulations to check Anticompetitive Practices

	Sector		
In percent	**Consumer**	**Private**	**Government**
Yes	15.5	23.1	44.2
No	84.5	76.9	55.8

Source: Computed

Most consumers believe that it is the Ministry of Commerce, which should provide redress (33 percent). But many also are aware of ICP (27.6 percent), ACIM (25.2 percent) and the consumer protection unit (11 percent).

The 1980 Fair Trading Act (as amended in 1988), and the 1998 Consumer Protection (Price and Supplies Control) Act, which replaced the 1991 Act currently covers certain competition aspects. The Ministry of Industry, Commerce, and International Trade is responsible for enforcement of the Acts. The Fair Trading Act aims at ensuring that trade practices do not mislead or confuse consumers that they are not detrimental to consumer interests, and that fixed prices are not exceeded. The Act prohibits agreements, including exclusive sales arrangements or monopolies likely to prevent or distort competition in the production and supply of goods (branded or not)

Table 5.8: Response to Exemption from the Competition Law			
	Sector		
In percent	**Consumer**	**Private**	**Government**
SME	43.5	66.7	75
State-Owned	24.4	11.1	4.5
Public Utilities	24.4	18.5	13.6
Import/Export			
Oriented	4.2	0	2.3
Other	3.6	3.7	4.5
Source: Computed			

and services. The 1998 Consumer Protection (Price and Supplies Control) Act deals primarily with monitoring prices and supplies of goods. Administered by the Price Control Unit (PCU) within the Ministry of Industry, Commerce and International Trade, price controls in Mauritius still consist of a fixed maximum price system and a maximum percentage markup system.

The markup system applies only to imports, and the fixed maximum price system applies both to imports and locally produced goods. The controlled prices are computed by the PCU and approved by the Minister of Industry, Commerce and International Trade; the Consumer Protection Unit within the Ministry ensures that traders comply with the pricing regulations. The survey reveals that 78 percent agree that existing rules, regulations and laws are not sufficient to check anticompetitive practices prevalent in Mauritius. Table 5.7 shows the breakdown of this new among the responpondent groups.

Moreover, above 85 percent of the private and public sector and above 70 percent of consumers are in favour of introducing a more comprehensive law on anticompetitive practices. Such a law, that is the Competition Act (2003) has already been drafted but has not yet come into force to date. The Competition Act provides for the establishment of the legal framework for the control of restrictive business practices with a view to enhancing competition in Mauritius through measures designed to promote efficiency, adaptability and competitiveness in the economy for the end purpose of widening the range of customer choice in obtaining goods and services at a fairer and more competitive prices. The Act identifies four categories of anticompetitive practices including: the abuse of monopoly power; collusive agreements; anticompetitive agreements; and bid-rigging.

According to the investigation carried out, about 80 percent think that the Competition Act should focus on economic efficiency and only 20 percent believe that the law should also consider other socio-economic issues as well. The survey also shows a divided opinion on whether there should be exemptions to the application of the Competition Act. Indeed 59 percent of the sample agrees that the law should cover all enterprises and persons, that is, no company is to be exempted from the law. In case, there are exemptions, SMEs are the first to be given preference according to 52 percent of the sample. SMEs are followed by Public Utilities Companies (22 percent), State-Owned Enterpries (19 percent) and only three percent believe that Import/Export enterprises are to be exempted. However, whilst 24 percent of consumers view that state-owned enterprises should be exempted from the law, this view is shared by only 11 percent of the business sector and about five percent of government bodies.

As per the Competition Act 2003, no exemption to the law applies specifically to SMEs. However, certain goods and services are excluded from provisions of the law relating to monopoly situations. These include aviation and harbour services, broad casting services, electricity services, financial services, Freeport services, information and communication technologies, postal services other than courier, goods and services supplied by state enterprises, and water other than for retail trade. In addition, agreements between members of a professional or trade association are excluded from the provisions relating to collusive agreements. As regards to anticompetitive agreements, if the Minister is satisfied that such an agreement would be beneficial to consumers, it would be exempted from the provisions of the law. Lastly, concerning bid-rigging practices, which are considered to be the fourth type restrictive business practices in the Act, exception is made to agreements where parties are inter-connected bodies corporate as well cases where the agreement whose terms are made known to the person making the invitation for bids or tenders at or before the time the bid or tender is made by a party to the agreement.

The survey also reveals that 51 percent prefer an autonomous competition authority whereas 45 percent prefer a competition authority that is an agency under the relevant Ministry. The preference for an autonomous competition authority is clear from the private sector and government institutions as well. In fact, 72 percent of the private firms and 77.6 percent of government institutions interviewed prefer an autonomous competition authority. On the other hand, about 56 percent of consumers prefer a competition authority that falls under the Ministry as opposed to 39 percent who prefer an autonomous CA. This may reflect the fact that consumers view government as an authority who protect their interest

Table 5.9: Views of Respondents on the Desired Kind of Competition Authority			
	Sector		
In percent	Consumer	Private	Government
Autonomous	39.3	72.1	77.6
Under Ministry	56.0	25.6	18.4
Other	4.7	2.3	4.0
Source: Computed			

vis-à-vis private profit-making enterprises, especially given the existing Price Control Unit of the Ministry of Commerce (refer table 5.9).

As regards to the kind of power that the Competition Authority should have, 35 percent believe that it should have both investigative and adjudicative powers against 64 percent who believe that the Competition Authority should be empowered to carry out investigations only leaving the power to judge to either a separate authority (43 percent) or to courts (21 percent). In Mauritius, the Competition Act (2003) establishes an Office of Fair Trading as the competition authority, which, would be a public office that shall establish its own procedures. The Director will be responsible for the day-to-day control, operation and management of the Office. The duties of the Director include: the investigation of any allegation or suspicion of restrictive business practices; gather, process and evaluate information which give rise to such suspicion; and take measures to prevent or terminate any restrictive business practices including issuing directives and proposals for remedial action.

However, the Director must apprise the Minister, in writing, before starting an investigation. If the Director finds that no undertaking has been made, or that the latter is unacceptable for some reasons or that the undertaking has not been complied with, he shall refer the matter to the Competition Tribunal, which will issue direction to resolve the matter. The Director is responsible for the monitoring of compliance with any undertaking and direction given by the tribunal. The Competition Tribunal has the power to give such directions it deems fit for the purpose of preventing or terminating an anticompetitive practice. This includes a direction that any line of business or area of activity of any person engaging in anticompetitive practices be separated and carried out by another person.

The majority of consumers (76 percent) and 64 percent of the private sector believe that the Competition Authority should also deal with unfair trade practices and consumer protection issues whereas 40 percent of state-owned enterprises think of the contrary. All the more, about 68 percent of the sample think that the competition Authority should involve different stakeholder groups in its functioning especially advocacy/publicity people.

Concerning sectoral regulators for electricity, telecommunication etc, 70 percent of the sample concur with the view that sectoral regulators are needed in certain sectors only with the CA either having power over them (43 percent) or coordinating with them (27 percent). The remaining 30 percent prefer many sectoral regulators with the CA controlling or coordinating with them. Table 5.10 shows the answer to the need for specialised sectoral regulators and interaction between the competition authority and those regulators.

One of the issues which has caused problems in implementing the law in some countries is the inter-relationship between the competition authority and sectoral regulators .By looking at the first schedule of the Competition Act, it seems that such disputes might not arise in Mauritius as it is stated that the law will not apply to "any practice or agreement expressly required or authorised by an enactment or by some scheme or instrument made under an enactment". This will imply that regulatory regimes established by statute and administered by regulatory bodies are outside the scope of the law. Besides, the second schedule of the Act excludes certain goods and services excluded from provisions relating to monopoly situations include aviation and harbour services, broadcasting services, electricity services, financial services, freeport services, information and communication technologies, postal services other than courier, goods and services supplied by state enterprises and water other than for retail trade.

Table 5.10: Response to the Interface between Sectoral Regulators and the Competition Authority	
	In percent
Yes for some sectors with CA having power over them	45
Yes for some sectors with CA co-ordinating with them	25
Yes for many sectors with CA having power over them	17.9
Yes for many sectors with CA co-ordinating with them	11.4
Other	0.7
Source: Computed	

Above 90 percent of the sample are of the opinion that there should be criminalisation prescribed in case the law is violated including about 30 percent who specify that it should be in some cases only.

Table 5.11: Response to Desirability of Criminalisation in Case the Law is Violated			
	Sector		
In percent	Consumer	Private	Government
Yes	77.7	45.2	37.5
No	22.3	54.8	62.5
Source: Computed			

Regarding the question of exemption from criminalisation, 66 percent share the view that some should be exempted on public interest grounds, that is when it comes to objectives such as technological advancement, protection of SMEs or socially disadvantaged groups and employment. However, a breakdown of the Table 5.11 shows that about 55 percent of the private sector and 62.5 percent of government bodies want equal treatment to all, that is, no exemption with regard to criminalisation, if the law is violated.

In case there is a provision for exemption given to criminalisation penalty, about 70 percent believe that well-defined guidelines would be needed to protect against the misuse of such provisions .The remaining chose to solve the issue through judicial scrutiny.

According to the Competition Act, any person engaging in bid rigging (excluding exemption cases) is liable to a fine not exceeding MUR500,000 (US$15,232) or to imprisonment not exceeding five years. All the more, any person who fails to comply without any reasonable excuse to the Act, or gives false information, or destroys information, obstructs to the execution of a warrant, refuse to take oath, fails to answer satisfactorily to the Director or the Tribunal or insults / commits any contempt to the tribunal shall commit an offence and be liable to a fine not exceeding MUR500,000 (US$15,232) or to imprisonment not exceeding two years or both. As indicated in Section 16 of the Competition Act, the Director of the competition authority as well as the competition tribunal should have regard to certain aspects in controlling restrictive business practices.

Indeed, they should pay attention to the desirability of maintaining and encouraging competition and the benefits to be gained in respect of price, quantity, variety and quality of goods and services. In addition, they should consider the positive effects of absence or preventing competition which might arise including benefits in terms of safety of goods and services, efficiency in production supply and distribution as well as development and use of new and improved goods and services and means of production and distribution. In addition, the sharing of benefits between consumers and business sector has to be considered.

As per the survey, 74 percent agree that the law should have provisions for the right to private action. A person can make a complaint about restrictive business practices to the Office of Fair Trading, which will investigate the allegation or suspicion. Furthermore, any person aggrieved by the Director 's decision regarding measures taken to prevent or terminate any restrictive business practices including issuing directives for remedial action, can appeal to the Competition tribunal within 30 days. Moreover, any party dissatisfied with the determination of the Competition tribunal may appeal to the Supreme Court within 21 days of the date of determination informing both the Tribunal and the other party, in writing, the grounds on which appeal is being made.

One of the main concerns of the Authority is to know whether other stakeholders should take part in the consultation decision process. This will normally enhance the process and provide fair and adequate remedies. Advocacy and publicity are the main ways through which different stakeholder groups can participate in the functioning of the Competition Authority. 60 percent prefer that such member views be heard through a structured consultative committee against 40 percent who prefer the views to be heard through occasional hearings. As per the Competition Act, the Office of fair Trading comprises of public officers.

However, the Act establishes a third agency, namely the Competition Advisory Council. The Council would have the function of advising the Minister on matters relating to restrictive business practices with emphasis on consumer protection, promote activities o raise awareness of the business community and consumers on competition and related matters, maintain communication with the business community and consumer associations and promote research in emerging trends in the field of fair competition and best business practices. The Council will comprise of members with different backgrounds including a Chairperson, the Director of the competition authority, representatives of the Ministry, Attorney-General Office, the Mauritius Chamber of Commerce and Industry, the Joint Economic Council, two representatives of consumer organisations and five members knowledgeable in consumer affairs, business, finance, law, public affairs or economics.

Legislations

Consumer Protection Law

There is a wide range of legislations to protect consumers in various sectors of the economy. The

Protection (Price & Supplies Control) Act, 1998 provides for better protection for consumers and establishment of a profiteering division of the Supreme Court. The law makes provisions for the Minister to fix the maximum mark-up and establish a code of practice to provide for the method to be adopted for the determination of the maximum recommended retail price of goods other than controlled goods. Traders should do proper labeling. Traders should not charge value added tax (VAT) illegally, sell goods higher than the indicated price, and also mislead price indication. A number of measures have also been taken to prevent hoarding such as registration of warehouse, duty to maintain and produce register, regulations on storage, closure of premises, and exposition of goods.

The Permanent Secretary may designate any public officer to be an authorised officer for the purpose of ensuring that the provisions of this Act.

The authorised officer is given power to search so as to examine goods, inspect documents,seize and detain goods, and obtain a warrant from the Magistrate. Moreover, there is protection of officers from liability. No liability, civil or criminal, shall attach to the Permanent Secretary or an authorised officer in respect of anything done in good faith in the exercise of his powers under this Act.

There is provision for the purposes of this Act, the establishment of a division of the Supreme Court to be called the Profiteering Division of the Supreme Court and which shall have exclusive jurisdiction to try any person charged with an offence under this Act and the Fair Trading Act.

The Competition Act (2003) provides for the establishment of the legal framework for the control of restrictive business practices with a view to enhancing competition in Mauritius through measures designed to promote efficiency, adaptability, and competitiveness in the economy for the end purpose of widening the range of customer choice in obtaining goods and services at a fairer and more competitive price. In addition to the creation of an office of fair-trading, it establishes a competition appeal tribunal and a competition advisory council. Provisions are made to deal with, monopoly exploitation and restrictive trade practices.

According to the Food Act (1998), and Food Amendment Act (2003), Section 16, a number of measures have been introduced to safeguard the interest of consumers. Amongst others, any person who imports, prepares, supplies, distributes or sells any food which:

(a) is poisonous, harmful or injurious to health;
(b) contains any foreign matter;
(c) is unfit for human consumption;
(d) is the product of a diseased animal or an animal which has died otherwise than by slaughter;
(e) is the product of a decomposed vegetable or vegetable substance; or
(f) is adulterated, shall commit an offence.

In order to protect consumers, there is a consumer protection unit (CPU) under the commerce division of the Ministry of Commerce and Co-operatives. It was formed in 1996 with the responsibilities of consumer education and enforcement of consumer laws. The duties falling under the responsibility of CPU include: checking trade premises and price monitoring; conduct surveys; enquire about trade practices; deal with complaints from consumers and consumer organisations; and preparing and delivering talks to different groups of people. The CPU collaborates with other departments and ministries to fulfill their duties.

In addition to consumer protection laws, the government to instill competition in the economy and to control the prices of strategic and essential commodities has established a number of institutions. There are several parastatal bodies which purchase, import and store strategic products and supply some services. The STC plays an important role in importing petroleum products, rice, flour and cement, considered essential for the economy.

The Competition Act 2003

The Competition Act (2003) aims at providing the legal framework necessary to control restrictive business practices and to regulate competition in Mauritius in order to promote the efficiency, adaptability and competitiveness of the economy and to provide consumers with a range of choices at fair and competitive prices.

The Act establishes an Office of Fair Trading as the competition authority, which would be a public office that shall establish its own procedures. The Director shall be responsible for the day-to-day control, operation, and management of the Office. The latter shall be assisted by public officers as may be required or by specialised persons appointed on a temporary basis. The officers shall be under the direct control of the Director. The duties of the Director include:

i. investigate any allegation or suspicion of restrictive business practices or any matter relating to such allegation or suspicion either on his own initiative or after receiving complaints or information which give rise to such suspicion;
ii. gather, process and evaluate information which give rise to such suspicion; and
iii. take measures to prevent or terminate any restrictive business practices including issuing directives for remedial action.

The Director shall apprise the Minister, in writing, before starting an investigation. In addition, he shall

arrange for dissemination of any information and reports that he may consider necessary for the discharge of his duties.

The Competition Appeal Tribunal which will be established for the purposes of the Act shall consist of a Chairperson and a Vice Chairperson who has to be a barrister or an attorney-at-law to be appointed by the Prime Minister. In addition, the tribunal would include: four other members who are knowledgeable in consumer affairs, business, finance, economics or management but would be appointed by the Minister. Members of the Tribunal would be appointed for a period not exceeding two years, which shall be renewable on such terms and conditions as the Prime Minister or Minister, as the case may be, thinks fit. Moreover, the Minister may designate such public officers as he thinks fit to assist the conduct of the business of the Tribunal.

The Tribunal has the power to give directions to prevent or eliminate such practice including the direction that any line of business or area of activity of any person engaging in such practice be separated and carried out by another person. The Tribunal shall establish its own procedures, act expeditiously and even in an informal manner. The tribunal has the power to request the director of the Office of Fair Trading or any public officer or other person to produce any document or evidence that may be required.

The Competition Act also establishes a Competition Advisory Council which shall consist of a Chairperson to be appointed by the Minister, a representative of the Ministry responsible for commerce, the Director of the Office of fair Trading, a representative of the attorney-general's office, a representative of Mauritius Chamber of Commerce and Industry (MCCI), a representative of Joint Economic Council (JEC), two representatives of consumer organisations, and not more than five persons who are knowledgeable in consumer affairs, business, finance, economics or management but would be appointed by the Minister. The Council shall establish its own procedures and meet at least once every three months. The Council needs to advise the Minister on matters relating to restrictive business practices, promote activities o raise awareness of the business community and consumers on competition and related matters, maintain communication with the business community and consumer associations and promote research in emerging trends in the field of fair competition and best business practices.

The Act identifies four categories of restrictive business practices including, the abuse of monopoly power, collusive agreements, anticompetitive agreements, and bid-rigging. Monopoly is defined as a situation where competition is nonexistent or where the enterprise enjoys a dominant position taking into account the availability of substitutable goods/service or supply source. Dominance is defined with respect to the ability to influence price or output in a given market. Any act or behaviour which:

- imposes unfair purchase or selling prices or other unfair trading conditions such as below cost pricing;
- limits supply, production, markets or technical development to the prejudice of consumers;
- discriminates among trading partners thereby placing them at a competitive disadvantage; and
- conclude contracts subject to acceptance by the other parties to supplementary obligations which have no connection with the subject of the contract shall be considered in the determination of an abuse of monopoly power.

However, the provision of certain goods and services are excluded from the above. These include aviation and harbour services, broadcasting services, electricity services, financial services, Freeport services, information and communication technologies services, postal services other than courier, goods and services supplied by state enterprises, and water other than water for retail sale.

Any agreement, which amounts to, a collusive agreement is prohibited and void. Collusive agreements include any agreement where the parties acquire or supply the goods or services of the same description with the objective of: fixing the selling or purchase prices of the goods/services; share markets or sources of supply; restrict supply or acquisition from any person; and agreements whose effect significantly prevents, restricts or distorts competition. Agreements between members of a professional or trade association are excluded from the provisions relating to collusive agreements.

Anticompetitive agreements include those where parties supply or acquire a substantial share of the market and that whose effect significantly prevent, restrict, or distort competition. However, if the Minister is satisfied that such an agreement is beneficial to consumers, it could be exempted from the provisions of the law

Bid-rigging is also considered as restrictive business practice. As such, any agreement whereby one party agrees not to submit a bid in response to an invitation or a party agrees upon the price, terms or condition of a bid or tender to be submitted in response to a call shall be considered as bid-rigging. These exclude agreements where parties are interconnected bodies corporate as well as cases where the person who makes the invitation knows the terms of the agreement. Any person undertaking bid rigging shall, if convicted, be liable to a fine up to MUR500,000

(US$15,233) or imprisonment for a term not exceeding five years.

Where the Director finds that a person has been involved in bid-rigging, he shall inform the police about it.

Where an investigation has revealed the existence of an abuse of monopoly situation, or existence of anticompetitive agreement or that there has been a breach of prohibition to enter into collusive agreement, the Director of the Office of fair Trading may accept an undertaking from the person he considers appropriate to prevent or terminate such restrictive business practice. The Competition Act defines an 'undertaking' as an obligation or commitment given in writing by an enterprise to and which has been accepted by the director of the Office of Fair Trading to prevent or terminate a restrictive business practice.

Moreover, he can give the direction that any line of business or area of activity of any person engaging in such practice be separated and carried out by another person. If the Director finds that no undertaking has been made, or that the latter is unacceptable for some reasons or that the undertaking has not been complied with, he shall refer the matter to the Competition Tribunal, which will issue direction to resolve the matter. The Director is responsible for the monitoring of compliance with any undertaking and direction given by the Tribunal. In addition, when the Director is satisfied that there has been a material change in circumstances subsequent to an undertaking, he may accept to vary the undertaking conditions or even release a person from the undertaking. He may also refer to the Competition Tribunal to vary or terminate directions issued.

The Director is responsible for the publication of any undertaking and directions and any variation or termination of such undertaking and directions. In performing the duty of controlling restrictive business practices, the Director shall consider the desirability of maintaining and encouraging competition as well as the positive effects of absence or preventing competition which might arise including benefits in terms of safety of goods, efficiency in production supply and distribution as well as development and use of new and improved goods and services as well as means of production and distribution. In addition, the sharing of benefits between consumers and business has to be considered. Any person aggrieved by the Director 's decision regarding measures taken to prevent or terminate any restrictive business practices including issuing directives for remedial action, can appeal to the Competition Tribunal within 30 days. Any party dissatisfied with the determination of the Competition Tribunal may appeal to the Supreme Court within 21 days of the date of determination informing both the Tribunal and the other party, in writing, the grounds on which appeal is being made.

The Director may, in writing, request any person whose business is being investigated to attend and answer questions or furnish information or produce documents with respect to any matter relevant to an investigation. Furthermore, the Director can make such a request to a public officer as well to furnish any information or reproduce document, in which the law does not prevent him from disclosing. The Director can make copies of documents and solicit explanation on them as well where that information has been stored in a computer, disc, cassette or microfilm or any mechanical or electronic device, the person shall produce or give access to it in a form that can be taken away and which is legible. The Director may designate any officer to enter and search any premises and take possessions of any specified documents.

The Director must, within six months, report to the Minister on the activities of the Office of Fair Trading as well as those of the Competition Advisory Council. The Minister shall present the report at the National Assembly. In the annual budget 2004/05, the Office of Fair Trading would be allocated a sum of MUR1mn (US$30,464) annually for its operations.

The new Government of the country is presently engaged in finalising a new competition Act for Mauritius.

Competition Law at Regional Levels

COMESA

The COMESA launched an FTA on October 31, 2000, and plans to become a Customs Union. The absence of tariff and NTBs under the FTA has enhanced competition in the COMESA region. In order to ensure fair competition and transparency among economic operators in the region, COMESA, in accordance with Article 55 of the Treaty, has formulated and will implement a regional competition policy. The policy is consistent with internationally accepted practices and principles of competition, especially the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.

Existing national competition policies shall be harmonised and brought in line with the regional policy to ensure consistency in regional policies, avoid contradictions and provide a regionally predictable economic environment. Primarily, the formulation of the regional competition policy is seeking to promote fair competition aimed at boosting regional trade and investment and maximising consumer welfare in the COMESA region through an effective regional competition framework and competition and consumer protection culture. The regional competition

policy will contribute to the adoption, improvement, and effective implementation of competition policies as an integral part of Member States' economic reforms. The policy has taken into account the effects of economic reforms already undertaken or planned by the Member States such as price liberalisation, privatisation programmes, dismantling of public sector monopolies, and the liberalisation of foreign investment and trade at the national level. The regional competition policy is also intended to provide a mechanism for technical cooperation among national competition agencies and strengthening of information exchange, consultations and joint operations in the enforcement of competitive standards and thwarting of anticompetitive practices at the bilateral, regional and multilateral levels.

The laws create an effective regional competition framework for the promotion of fair competition and an active consumer protection culture. They are thus key instruments for boosting regional trade and investment and maximising consumer welfare throughout the region. They set out the role of the COMESA Competition Commission in ensuring fair competition across the region. They are thus concerned with cross-border effects and only address the enforcement of competition within Member States borders to the extent necessary to ensure fair competition across the region. Potential breaches of the law may be brought before the COMESA Competition Commission, which will investigate the complaints, in conjunction with the Relevant Authorities of the Member States, as defined under article 5 (2)(b) of the COMESA Treaty. In this context, Member States will find it useful to establish their own Competition Authority with the powers and expertise to both co-operate with the COMESA Competition Commission and to promote fair competition within their borders.

At the regional level, within the COMESA, the establishment of a common Competition Law and Policy is one of the means to promote further economic integration and development among its members. However, in practice, it has proven difficult to have a uniform competition policy given the disparity in the level of economic development across countries. This regional competition law is applicable for all COMESA members involved in trans-border transactions. However not all member countries have adopted this law including Mauritius which Mauritius believes that it is not yet ready to abide by the regional competition rules and regulations given the difficulties it is facing in putting in place institutional mechanisms and its lack of experience in administration of this subject.

SADC

The SADC is also contemplating the possibility of having a competition framework for its members. The promotion of trade and investment with the SADC regional arrangement has placed an increasing emphasis on the development of a suitable competition policy. To this effect, the Special Advisory Division is assisting the SADC Secretariat in developing a competition law. The development of competition policy and law is very important and of great concern as markets become further integrated especially given different market structures and geographical sizes. A suitable competition regime will help in assisting the private sector and to deal with anticompetitive behaviour and arrangements through appropriate regulatory and institutional mechanisms.

Interfaces between the Regulatory Institutions and Competition Regime

In this section, an analysis of the function of regulatory institutions in the financial services sector as well as the utilities sector is undertaken. Regulatory bodies are very important especially in markets, which have a tendency to be characterised by monopolies or oligopolies. They act as institutions that must ensure efficiency and no abuse of dominant position.

Financial Services

The regulatory framework in the financial services in Mauritius consists of mainly, Bank of Mauritius (BOM) and Financial Services Commission (FSC). Both institutions have been mandated to foster financial sector development so as to make Mauritius a regional financial centre with international standards and reputation. The diversification of the financial system and promotion of competition has ranked high on their agendas. The BOM has been developing the financial infrastructure in terms of payment mechanism, money markets development and introduction of financial instruments. In order to reap the full benefits of financial liberalisation and competition, the BOM has shifted its techniques of monetary policy implementation from direct to market-based instruments.

The BOM recently launched the 'Trading of Treasury / Bank of Mauritius Bills' on the Stock Exchange of Mauritius (SEM) Ltd where the trading of Bills will be restricted to Mauritian citizens dealing a maximum amount of MUR2mn (US$60,934) per order. This would ultimately aim at promoting competition in the money market. Moreover, the BOM has set the following guidelines to regulate and promote competition in the market; Guidelines on credit risk management; credit concentration, credit classification, internet banking, corporate governance, on Related Party Transactions, Public Disclosure of

information, various notes on Anti-Money Laundering with the essence of Customer Due Diligence paper. All these, set standards to promote competition in the market as well as to, protect consumers' interest. Under the new Banking Act, no distinction between category one and category two banks are made and a unique banking license to both categories of banks are granted in order to enhance competitive behaviour in the market. There is the recent setting up of Banking Ombudsperson within the BOM (Bank of Mauritius Act 2004) and more transparencies in commercial banks are meant to cater to the protection of consumers in banking institutions. The BOM, together with the Financial Markets Committee, are acting as forum for discussions on developments in domestic markets in order to regulate competition and make the regime fair and sound.

The Credit Information Bureau as a repository of credit information from which credit borrowers can have access to symmetric information on various aspects acts as another competition policy. Furthermore, there exists the Foreign Exchange Dealers Act 1995 to regulate the activities of moneychangers and foreign exchange dealers and to protect depositor's interest. The Anti-Money Laundering Act 2003 is meant to report suspicious transactions to the Financial Intelligence Unit and protect consumers. The Board of Investment has set the Investment Promotion Act 2002 and the Finance Act 2004 (providing restrictive trade and investment practices), thereby regulating competition and consumer protection.

The FSC also has the Financial Services Development Act (2001) and the Companies Act (2001) to regulate the behaviour of companies, competitors and consumer protection. Some other Acts are the Trusts Act 2001 in order to protect stakeholders in various trusts set up in the country. This is achieved also with the Stock Exchange (conduct of trading operations by dealer's authorised clerks) rules 1992, the Stock Exchange Act 1988, the Stock Exchange Rules 1994 in order to regulate competition from foreign investors in the stock market, the Stock Exchange (Licensing) regulations. Various legislations dealing with the insurance, securities markets, and moneylenders are being enacted in order to enhance the regulatory framework.

Utilities Sector

Telecommunications

The mission of the Information and Telecommunications Authority (ICTA) is to ensure universal access to ICT at reasonable and affordable price. The main objectives of the authority include: the democratisation of access to information through the use of ICT; creating a level playing field for all operators in the market; licensing and regulating information and communication services; encouraging optimum use of ICT in education, business and services; promoting the competitive edge of Mauritius as an international player and facilitating research and development (R&D) in ICT and advise on new technologies. The ICTA enjoys considerable powers in the furtherance of its objectives. The Authority is empowered to ensure that services are reasonably accessible at affordable cost and to investigate complaints from consumers and take appropriate corrective measures thereon.

The setting up of ICTA comes at a time when Mauritius is undergoing profound changes in the field of communications and broadcasting. After decades of State Control, the electronic media has recently been liberalised and three private radio stations are actually operating. In telecommunications too, the process of liberalisation has already been initiated with the coming into play of competing providers of cellular phone, Internet services and fixed lines telephony. Given the new context of liberalisation and competition and the convergence of Information, telecommunications and broadcasting technologies and services, the ICTA is destined to play an effective role in regulating and licensing the activities of present and future players. It will also be instrumental in the choice of new technologies in the best interests of the country

Utility Regulatory Authority

The Utility Regulatory Authority has to ensure the sustainability and viability of utility services; protect the interests of both existing and future customers; promote efficiency in both operations and capital investments in respect of utility services; and promote competition to prevent unfair and anticompetitive practices in the utility services industry. Subject to the relevant utility legislation, the Authority may implement the policy of the government relating to applicable utility services; grant, vary, and revoke licences in respect of a utility service; enforce the conditions laid down in an undertaking authorisation; and regulate tariffs and other charges levied by a licencee in accordance with any rules specified in the relevant Utility legislation; mediate or arbitrate disputes between a customer and a licencee, or between two or more licencees; determine whether a licencee has an obligation; establish an appropriate procedure for receiving and enquiring into complaints by customers in relation to any utility services; and establish and implement adequate systems for monitoring the compliance by licencees with standards and applicable regulations, and making such information publicly available.

The Authority shall not, in the exercise of its functions under this Act or a utility legislation, be subject to the direction or control of any other person or authority. It is not only important for the regulatory bodies in the Telecommunications and the Utilities sector to see

to it that there is no abuse of monopoly or market leader positions but they must also regularly liaise with the Competition Authority to ensure future developments in these sectors safeguard consumers' interest while maintaining an adequate and cost effective standard of service

Conclusion

In a small economy like Mauritius, one would expect the market concentration to be higher on average than a larger economy. Moreover, a notable feature of the Mauritian economy is the concentration of economic powers in the hands of a small number of enterprise groups, most of them family-controlled.

Several key economic reforms have helped foster stronger competition in the domestic market including the elimination of protective tariffs, the liberalisation of foreign exchange controls on FDI and foreign exchange transactions, the partial deregulation of the financial system, reduction in the number of goods subject to maximum prices or mark-ups and the State-trading Corporation competing with the private sector in the import of certain goods.

In addition, there is a lot of variation in the level of competition in the different sectors of the Mauritian economy. A number of institutional factors have contributed towards greater competition during the recent decade such as legislations, domestic liberalisation and internationalisation. However, certain types of restrictive business practices still exist in certain sectors analysed in this report.

Overall, the survey results tend to confirm collective price fixing, market sharing and entry barriers as the most common factors affecting competition in the Mauritian markets. This is not surprising given that many markets in Mauritius exhibit oligopolistic characteristics where entry barriers are high and with some form of collective price fixing through price leadership. However, from the survey we see that bid-rigging, resale price maintenance and price discrimination are also important factors affecting competition. The sectors where such practices are most prevalent are the consumer goods sector, manufacturing, services and construction.

According to consumers, many of these practices originate from the local business environment. Therefore, having an efficient and independent Competition Commission cannot be more relevant in order to regulate and ensure healthier competition, where not only business and consumers but also the country will gain at large.

From the survey, it seems that consumers are aware of the most important legislations, which exist to check such practices, namely the Consumer Protection Act (44.4 percent), the Fair Trading Act (37.8 percent) and the Hire Purchase Act (11.1 percent). Thus there could be practical difficulties for them to seek remedies, as awareness of the legislation does not seem to be an issue. The present framework for consumers and other stakeholders to address their complaints / grievances most probably must be revisited.

Moreover, above 85 percent of the private and public sector and above 70 percent of consumers are in favour of introducing a more comprehensive law on anticompetitive behaviour. Such a law, i.e., the Competition Act (2003) has already been drafted but has not yet come into force to date.

In this era of deregulation and liberalisation of trade and capital, Mauritius needs an appropriate competition law and policy. Competition institutions can play a valuable role in shaping the structure of economies to stimulate efficiency, growth to the benefit of consumers. A concerted political effort along with real involvement of all stakeholders is needed as lack of political will together with resistance from the private sector has impeded the implementation of the law.

The survey showed a divided opinion on the autonomy of the competition authority. Indeed 51 percent of the sample prefers an autonomous competition authority whereas 45 percent prefer a competition authority that is an agency under the relevant Ministry. The preference for an autonomous competition authority is clear from the private sector and government institutions as well. On the other hand, about 56 percent of consumers prefer a competition authority that falls under the Ministry as opposed to 39 percent who prefer an autonomous CA**.** This may reflect the fact that as an authority who protect their interest *vis-à-vis* private profit-making enterprises especially given the existing Price Control Unit of the Ministry of Commerce. The survey also reveals varying opinion on the power of the competition authority to investigate and adjudicate.

Many lines of business activities and agreements are presently excluded from the provisions of the Competition Act. About 60 percent of the sample believes that no enterprises should be exempted from the law and in case there should be exemptions the majority believe that it should be SMEs who should benefit. The current law does not make such provisions.

One of the issues, which caused problems in implementing the law in some countries, is the inter-relationship between the competition authority and sectoral regulators. By looking at the first schedule of the Competition Act, it seems that such disputes might not arise in Mauritius as it is stated that the law will not apply to "any practice or agreement expressly required or authorised by an enactment or by some

scheme or instrument made under an enactment". This will imply that regulatory regimes established by statute and administered by regulatory bodies are outside the scope of the law.

Like in many other developing countries, in Mauritius, competition law and enforcement is a difficult and little-known issue. While benefiting form several trade agreements, Mauritius has been shielded from 'real' competition. But nowadays, with the dismantling of trade barriers and phasing out of such preferential agreements, there is even greater need to develop a competition culture in business, government and the general public.

Civil Society should have a greater role to play in fostering competition by creating, stimulating and sustaining active consumer movement. Moreover, consumer organisations should have the right to bring cases forward. All the more, they can use their knowledge and networks to assist the competition authority in gathering information.

Note: This chapter has been researched and written by Reshma Peerun, Sunil Bundoo and Kheshwar Chandan Jankee of the Faculty of Social Studies and Humanities, University of Mauritius, Mauritius. The authors acknowledge inputs received from Mosadeq Sahebdin of the Institute for Consumer Protection (ICP), Mauritius. Comments received from the members of the Project Advisory Committee have helped refine this paper. Views and suggestions on the structure and content of this paper received from Nitya Nanda of CUTS C-CIER have been incorporated appropriately.

Chapter 6

Competition Scenario in Mozambique

Introduction

A well functioning economic system requires competition among the producers and providers of various goods and services in the market place. In order to ensure quality goods and services at reasonable prices to the consumers, there is a need for a competitive business environment and an effective regulatory mechanism in the economy. Therefore, competition policy and law is a useful tool, which could be used carefully to achieve economic efficiency, competitive markets and public welfare.

While competition policy is a useful tool for setting the rules for the functioning of a liberal economic system, unregulated competition can lead to crowding out of small firms by large firms and welfare losses to consumers. Anticompetitive practices are inherent characteristics of any market oriented economy, though the gravity and nature of the practices vary from sector to sector and country to country. Anti competitive practices are not only confined to the private sector entities but also emanates from public sector firms, trade associations, interest groups, etc. Many a time, even well intentioned public policies and regulations can become smokescreens for anticompetitive and monopolistic practices. For instance, welfare oriented public health initiatives through fortification of household sugar with vitamin A in a Southern African country has recently been criticised by consumer bodies for discouraging import competition, which resulted in excessive prices for sugar and welfare losses to the consumers.

This section examines the state of competition in Mozambique by analysing the policy framework, behaviour of the market players in key business sectors of the economy, and with the help of a purposive survey and personal discussions with a cross-section of the society. The initative is in response to the need for capacity building and targeted policy advocacy in developing appropriate competition policy and law for enhancing economic development and consumer welfare. The report has benefited from discussions held at the first NRG consultation and responses received from many stakeholders.

Country Profile

Mozambique became an independent republic in 1975 after a long period of colonial rule by Portugal. Since independence, Mozambique followed a communist/ socialist pattern of political system and economic development model with centralised planning and predominance of public sector for about two decades. Immediately after the independence the new republic plunged into a civil war, which lasted for 16 years, causing severe damage to human life, social infrastructure as well as economic development.

In 1994, Mozambique adopted a multiparty democracy and civil war ended with a cease-fire agreement with the rebel movement in 1995. Consequently, political and socio-economic stability emerged in the country. The socio economic changes since the introduction of a multiparty political system and economic reforms have been rapid in Mozambique.

Mozambique is situated on the South-eastern coast of Africa and it shares land border with Zambia, Malawi, Tanzania, Zimbabwe, Swaziland, and South Africa. The total land area of Mozambique is 799,390 sq. km. For administrative purposes, Mozambique is divided into 11 provinces. Savannah and secondary forests cover about 70 percent of the land area. Approximately 45 percent of the land is classified as domestic land, which includes crop and permanent pasturelands. The land is owned by the state. The total area of the exclusive economic zone (EEZ) is about 562 sq. km. Mozambique has a coastline of 2,700 km. in length and it provides large access to marine resources. Mozambique is also endowed with over 100 rivers, including the Zambezi, which are sources for irrigation, power generation and other economic activities.

According to the government estimate of 2006, the population of Mozambique is 19.88 million[40]. It grows at an annual rate of 2.5 percent. About 45 percent of the population comprise of young people below 15

40 FAO, (2005) Special Report: FAO/WFP Crop and Food Supply Assessment Mission to Mozambique, PDF copy, June, pp.7

Table 6.1: Basic Economic Indicators of Mozambique		
Items/Indicator	**Value**	**Year**
Total area	801,590 sq. km	2004
Population	18.79 million	2003
GDP	US$5.5bn	2005
Annual GDP growth rate	8.2 percent	2004
Per capita gross national income (2004):	US$250	2004
Per capita gross domestic product	US$276	2004
Agriculture (cotton, cashew nuts, sugar-cane, tea, cassava (tapioca), corn, coconuts, sisal, citrus and tropical fruits, potatoes, sunflowers, beef and poultry.	25.2 percent of GDP; (annual growth rate 7.9 percent)	2004
Industry: (food, beverages, chemicals (fertilizer, soap, paints), aluminium, petroleum products, textiles, cement, glass, asbestos, and tobacco)	35.1 percent of GDP; (annual growth rate 10 percent)	2004
Services	39.7 percent of GDP; annual growth rate 4.7 percent	2004
Total Imports	US$1.424bn	2004
Main import items	Machinery and equipment, vehicles, fuel, chemicals, metal products, foodstuffs and textiles	2004
Total Exports	US$1.258bn	2004
Main export items	Aluminium, cashews, prawns, cotton, sugar, citrus, timber, bulk electricity, natural gas.	2004
Foreign direct investment (net):	US$317.7mn	2003
Major export partners:	Belgium 25.7 percent, South Africa 14.3 percent, Italy 9.6 percent, Spain 9.3 percent, Zimbabwe 4.7 percent Portugal	2003
Major import partners:	South Africa 20.6 percent, Australia 9.0 percent, US 3.8 percent Portugal, Japan	2003
Sources: USAID http://www.state.gov/r/pa/ei/bgn/7035.htm & 2006 index of economic freedom, http://www.heritage.org/Research/features/index/country.cfm?id=Mozambique		

years old. The working or active population (between ages 15 and 65) constitutes about 50 percent of the total population. About two thirds of the population lives in the coastal zone, which has easy access to food and employment opportunities. Most of the towns, tourist attractions, infrastructure facilities, industry and commerce are also located in this area.

According to the 2004 Human Development Report (HDR) of the United Nations Development Programme (UNDP), Mozambique ranks 171st out of 177 countries on the human development index, falling below Ethiopia and only ahead of Guinea-Bissau, Burundi, Mali, Burkina Faso, Niger, and Sierra Leone. Although levels of poverty remains high by several standards, some progress in poverty reduction has been achieved in recent years as a result of sustained economic growth coupled with public and private investment in infrastructure development, rehabilitation economic emergence of and social sector. According to an estimate by the government on incidence of poverty, the estimate suggests that the percentage of total population well below the absolute poverty line has decreased from 69 percent in 1997 to 54 percent in 2003[41].

The economy of Mozambique is mainly dependent on agriculture, which constitutes about a quarter of the GDP and the bulk of merchandise exports. Traditional export items include shrimp and marine products, sugar cane, cashew nuts, copra, tobacco, and cotton. The industrial and

41 AfDB/OECD 2005-2006 (2006) African Economic Outlook, Mozambique, pp.4

manufacturing sector together with the mining sector accounts for 35 percent of the GDP; the major manufacturing sector includes food processing, tobacco, beverages, aluminium, textiles, and footwear. The mining sector has potential but remains underdeveloped. Mozambique is a net importer of services. Service sector contributes about 40 percent of the GDP. The key service sector businesses in Mozambique are construction, tourism, transport, energy, communication, banking, and consultancy.

Mozal, an aluminium smelter which started production in 2000, is a successful example of a FDI based enterprise, which has boosted the domestic and export sector of Mozambique. Having first invested in Mozambique in the late 1990s, the mining company made a US$1bn expansion to the existing aluminium plant by constructing Mozal II around 2003. This investment made Mozambique among the major producers of aluminium in the world.

Mozambique's geographical location and natural resource base offers ample scope for investment and rapid social and economic development of the country. Its variety of natural resources include forests with diverse wildlife, minerals, water resources with a large potential for hydroelectric power generation, and marine resources. Located on the coast of the Indian Ocean, Mozambique offers harbour and transportation facilities to landlocked neighbouring countries.

However, Mozambique faced a huge challenge in achieving economic development. Nearly 60 percent of the population lives below the poverty level 60 percent of adults are illiterate. About 15 percent of Mozambican adults are considered to be HIV positive. Despite increased vaccination rates and improved access to basic health service, over 60 percent of the population remain without access to health care.

In order to address challenges of economic development, and to manage mounting external and internal debt, Mozambique initiated the SAP in 1987 in consultation with the International Financial Institutions. The SAP aimed at reducing government control over the economy, promoting agricultural production, improving marketing of agricultural products, reducing internal and external trade imbalances, improving resource distribution, and expanding the private sector in economic activities. In the process, most of the industries and parastatal enterprises owned by the government were privatised and limits on public spending were introduced.

The liberal economic policies of the government, coupled with the political reconciliation, rendered positive economic results in a number of sectors. During 1986-1989, GDP growth increased from 0.9 percent to 5.3 percent, accompanied with an increase in consumption per capita. Inflation fell from 170 percent in 1987 to 40 percent in 1990. In spite of these economic achievements, external debt remained high compared with the GDP and foreign exchange earnings.

In general, change has been remarkable since early 1990s in some areas with the emergence of functioning national institutions, three general elections, and the evolution of a new political culture and liberalised economic regime, increased investment and growth rate. However, significant barriers to private sector initiative, investment and competitive market environment in the economy still remain. Economic policy-making is still dominated by bureaucratic processes. Corruption, undue delay, a weak legal system, numerous regulations, and poor service delivery by public agencies are key challenges in improving private sector confidence in economic governance.

Overview of the Economy

Mozambique still ranks among the LDC with low socio-economic indicators. Per capita GDP in 2004 was estimated at US$276, a significant increase over the mid-1980s level of 6,955,200 Mozambique Metical (US$120). With a high foreign debt (originally 143640bn Mozambique Metical (US$5.7bn) at 1998 net present value) and a track record on economic reform, Mozambique was the first African country to receive debt relief under the initial Heavily Indebted Poor Countries (HIPC) initiative in 1999. In April 2000, Mozambique qualified for the Enhanced HIPC programme as well and attained its completion point in September 2001.

HIPC completion point encouraged the Paris Club donor nations agreeing to substantially reduce the remaining bilateral debt in November 2001. This led to the complete forgiveness of a considerable volume of bilateral debt. During the summit in July 2005, the G-8 nations agreed to provide significant multilateral debt relief to the world's least developed nations. As follow up, in December 2005, the IMF formalised the complete cancellation of all Mozambican debt contracted by the IMF.

Between 1994 and 2004 average annual GDP growth rate was 8.2 percent. Mozambique achieved this growth rate despite the devastating floods of 2000, which slowed down the GDP growth to 2.1 percent. The World Bank has predicted an average growth of 7 percent during 2004-2008 period, whereas the Government projects between 7-10 percent growth a year over the same period. However, to keep the momentum of growth requires economic reforms, enhanced FDI, development of the agriculture, transportation, telecommunications, and tourism sectors. Enhancing economic growth in the

agricultural sector is a major challenge. Although about 80 percent of the population engages in small-scale agriculture, the sector suffers from inadequate infrastructure, investment, marketing networks, high cost of production, and low incentive among small farmers due to import competition. However, a large portion of Mozambique's arable land is still uncultivated, which offers room for growth opportunities in the sector.

Economic Reform

Economic reform has been extensive since the late 1980s. More than 1,200 state-owned small and medium enterprises have been privatised. Preparations for privatisation in the telecommunications, electricity, ports, and railroads are still under consideration. When privatising a parastatal enterprise the Government usually selects a strategic foreign investor and concession agreements are finalised thereafter. As part of the reform in the trade policy sector, Mozambique introduced a value-added tax system in 1999 as part of its efforts to increase domestic revenues. Further, customs duties were reduced, and customs management streamlined and reformed. The new reforms under consideration include the age-old Commercial Code reform; revision of the labour law; comprehensive judicial reform; strengthening of the financial sector; civil service reform; improved government budget making, audit, and inspection capability, and so on.

Monetary Policy

The Government's tight control of spending and the money supply combined with the initial financial sector reform, reduced inflation from 70 percent in 1994 to about five percent in 1998-1999. In 2003, inflation reached 13.5 percent, and in 2004 it decreased slightly to 12.6 percent based on the consumer price index. As of late December 2005, the exchange rate was approximately 24,000 Meticals per US$, though it had been as low as 18,000 and as high as 29,000 at different times during 2005. In the first half of 2006, the exchange rate of metical was between 26000-27000 against a US$. Since the beginning of 2006, Mozambique introduced a new series of meticals, i.e. a new metical worth 1,000 old meticals. This reform is an attempt to simplify the rather depreciated currency, where prices of basic goods often run into millions of meticals.

Expanding International Trade

In 2004 Mozambique exported MZN31,752bn (US$1.26bn) worth of goods and imported MZN35,2800bn metical (US$1.4bn). The ratio of exports has increased significantly since the early 1990s, when it used to be about 1:4. Support programmes provided by donors, private and foreign direct investments have largely compensated for balance-of-payment shortfalls. A number of recent foreign investment projects have helped improve the external trade balance. Mozal, a large aluminium smelter that commenced production in 2000, greatly expanded Mozambique's trade volume. Further, the Sasol gas pipeline connection to South Africa has enhanced exports revenue in recent years.

Traditional Mozambican exports include cashew, shrimp, fish, copra, sugar, cotton, tea, tobacco, citrus, and exotic fruits. Since the economic liberalisation, most of these industries are being rehabilitated, except for cashew and cotton, which faced an unfavourable business environment. In addition, Mozambique is less dependent upon imports for basic food, especially in rural areas as a result of steady increases in local production. However, the South-western region of Mozambique still imports considerable volume of food items from South Africa and Swaziland. Imported food items are found to be cheaper and they compete with local products. In the case of poultry, imported frozen chicken from Brazil has a visible price advantage as they sell at about half the prices of the locally produced chicken. The share of manufacturing, especially consumer durables in the import remained high and most of the products come from South Africa, Portugal, China, and South and South East Asia.

In 2005, despite a jump in the oil import bill, the trade balance improved slightly, largely due to aluminium exports. The construction of the Corridor Sands project and the Moma project are expected to boost imports of capital goods in 2006, but will also start to contribute to export growth towards the end of 2007.

Mozambique's principal export market is the Netherlands, to which 100 percent of Mozal's aluminium is exported, reflecting the importance of trade links with Netherlands as a hub for the transhipment of aluminium. Other important destinations for Mozambique's exports include South Africa, Malawi and Portugal. The largest source of imports is South Africa, followed by the Netherlands, Portugal, Australia, India and the US. At present, Mozambique's major share of export revenue comes from the Mozal and Sasol gas pipeline projects.

SADC, ACP-EU and WTO Trade Agreements

In December 1999, Mozambique approved the SADC Trade Protocol. The Protocol aims at creating a free trade zone among more than 200 million consumers in the SADC region. Implementation of the Protocol began in 2002 and has an overall zero-tariff target set for 2008; however, Mozambique's country-specific zero-tariff goal is currently placed for 2015. Under the SADC arrangement, Mozambique will have to

announce a schedule of tariff reductions on intra-regional imports beginning in 2008. Mozambique also plans to reduce the highest tariff rate from 25 percent to 20 percent on imports from all countries, including non-SADC countries, in 2006.

The Economic Partnership Agreement (EPA) negotiations for the European Union (EU), which began in 2002, entered a new round in September 2005, and the present target is to complete it by the end of 2007. The objectives of the proposed EPAs include liberalised trade between SADC EPA group and the EU in the longer term, and EU support for trade capacity building in the medium term. At present, Mozambique benefits from duty-free access to the EU under the EBA initiative and Cotonou agreement[42]. Since SADC protocol has flexibility for sugar, the domestic sugar sector gets high protection; sugar prices are regulated in the market, and imported sugars attracts 70 percent duty. Mozambique joined the WTO in 1995-1996 and since then has been taking part in the WTO deliberations and it is also an active member of the LDC and Africa group.

Social and Economic Policies Affecting Competition

This section analyses the key economic policies such as fiscal, monetary, investment, industrial and trade policies, poverty reduction strategic, labour, licensing, etc., as well as their implications on the competitive functioning of the market and business environment in Mozambique.

Domestic policies are the key to effective economic participation in the global economy[43]. First and foremost are trade policies that are broadly neutral with respect to both imports and exports, and which in particular leave potential exports free of unnecessary regulatory burdens on investment, imports, employment, and production. However, in addition to 'open' trade policies, sound regulatory environment for telecommunications, transport infrastructure, education, law enforcement and other business related factors are necessary for providing an enabling environment to promote trade and investment. There are encouraging signs in a number of areas since the introduction of deregulation, and of trade and investment liberalisation in the form of increased exports and development of domestic industries in a variety of agro-processing and manufacturing sectors.

Macroeconomic Policy Reforms

In order to address the poor economic performance, the government of Mozambique introduced a comprehensive 'Economic Rehabilitation Programme' (ERP) in 1987, with the assistance of the IMF and the World Bank. Subsequently, the reform effort was renamed 'Economic and Social Rehabilitation Programme' (ESRP) in 1989 with a view to focus on the social dimensions of the adjustment effort.

The objectives of the reforms were initially to raise production levels, reduce financial imbalances, eliminate parallel markets and create a basis for future economic growth. In particular, the plan was to increase market oriented agricultural production by the family sector by an average growth rate of 29 percent per year between 1987 and 1990 and boost industrial output and transport sector by average annual growth rates of 12 and 23 percent, respectively[44].

The ERP interventions included a series of stabilisation measures such as fiscal adjustments, monetary restraint and devaluation of the currency. In harmony with the market-oriented reform, price and trade liberalisation efforts have also been pursued with a view to promote efficient allocation of resources. On the fiscal side, the government enforced strict limits on expenditures by many state owned companies and institutions since the adoption of the ERP.

The official exchange rate was brought to more realistic levels after the introduction of the ERP, and an official market for foreign exchange was introduced in 1990. The real interest rates on bank loans became positive in late–1991, for the first time, since independence, in order to promote savings and make credit allocation more efficient. Financial sector reforms were speeded up in 1992 with the separation of commercial and central bank functions of the 'Banco Comercial de Moçambique' (BCM). Private sector participation in the banking and financial sector has expanded since the introduction of financial reforms, and interest rates were fully deregulated in 1994.

As part of the reform in the agricultural sector, the government controlled only prices of a few items such as sugar, bread, fuel, transport, and medicines and subsidies were progressively lifted from food and other items. Consequently, consumer prices of imports and domestic goods and marketed crops rose considerably towards market rates during the early reform period.

42 AfDB/OECD 2005-2006 (2006) African Economic Outlook, Mozambique, pp.4
43 Flatters, 2001b
44 Economist Intelligence Unit, 1996

Trade Policy

Mozambique has carried out several domestic and external trade reforms, aimed at improving the enabling environment for investment and promoting competition. This is despite the unfavourable regional and global trading environment; especially, the agricultural subsidies of some of the world's richest trading countries that adversely affect the farming sector of the country. However, domestic policy environment and lengthy procedures governing business and trade in Mozambique need further improvement to give the business sector better opportunity to participate and compete not only in the domestic market, but also in regional and global trade, and benefit from the liberalisation process.

In 1999, Mozambique adopted a formal Trade Policy Strategy (TPS) as part of its effort to modernise the economy. Mozambique, as a member of the SADC , signed a Trade Protocol that became effective in 2000, and whose main objective is the establishment of a SADC Free-Trade Area. Most-favoured nation (MFN) import duties range from 2.5 percent to 30 percent ad valorem, and the simple average applied MFN tariff rate is 13.8 percent, among the lowest in southern Africa[45].

Mozambique has reformed the tariff structure in recent years, essentially complying with the SADC and WTO agreements. However, many people in the business sector felt that the adoption of a much more uniform tariff structure would provide a level playing field for different sectors. Lower tariff rates would reduce corruption and smuggling. They would also reduce the anti-export bias of the current tariff structure. The argument is that the revenue effects would not be very significant in budget as the government depends on trade taxes for only about 15 percent of total revenue. Further, the country has the flexibility to introduce contingent protection measures under the 'anti-dumping' and 'safeguard' measures agreed by the WTO.

In terms of the effect of the present trade regime, a large cost of the barriers to international trade is borne by not only the export oriented sector but also by some domestic sector which depends on imported inputs. The freeing of exports from these hidden costs would require meaningful reform in import tariffs, customs, and trade facilitation. Removal of unnecessary barriers that burden exporters with the costs of the domestic regulatory environment should be one of the highest priorities in trade policy reform in Mozambique.

Investment Policy

The Foreign Investment and Advisory Services (FIAS)[46] report of 2005 documented many basic problems in Mozambique's investment and business environment. While Mozambique has attracted several large capital-intensive investments in the natural resource based sector, it has had far less success in attracting investments that capitalise on abundant labour resources, and that would contribute in more direct way to employment creation and poverty reduction. Many investors feel that negative elements in labour laws, which does not consider the inadequate skilled persons at national level as a handicap for the investors. Further, cumbersome land procedures, tax systems, the financial sector, company laws and regulations, telecommunications, transport, law enforcement, corruption, etc., are among the other suggested reform list. Removal of these administrative, legal and systemic barriers to business has been a slow process. And yet these reforms are a critical complementary factor to effective trade and business policies.

The privatisation programme, combined with attracting foreign investment has made some impact on the manufacturing, tourism, telecom and a few service sector business activities. The low cost electricity, abundant raw materials combined with abundant semi and unskilled labour at reasonably low cost should act as a major catalyst for industrialisation and export-oriented business. To support these process investment incentives were given to investment in certain priority sectors. Further, legislation allowing the establishment of free zones, i.e. EPZs for exports oriented investments has been introduced. Mozambique's preferential access to major markets such as the US and EU should induce many labour-intensive industries. With the opening of Mozal aluminium smelter Project phase II, the contribution of the manufacturing sector has risen and this has also encouraged downstream industry such as cement, power, port, etc.

Most sectors of Mozambique's economy are open to 100 percent foreign investment, and foreign investors generally receive the same treatment as domestic investors. Some restrictions remain in effect; such as private ownership of land, and mining and management contracts are subject to specific performance requirements. The investment policy does not limit foreign ownership or control of companies. Lengthy registration and approval procedures governed by various laws and regulations and in some instances lack of clear statutes because delays are affecting domestic and foreign investors. Mozambique allows 100 percent repatriation of profits

45 Mozambique-EU country strategy paper and national indicative programme 2001-2007, (PDF copy) pg 8
46 Foreign Investment Advisory Service (FIAS) Report, 2005

and retention of earned foreign exchange in domestic accounts. The Investment Promotion Centre (CPI), which processes foreign investment, is yet to harmonise its activities for a 'one-stop shop' for investors, has not been materialised as investors are to move around in various departments in procuring the licences. Payments and transfers are subject to maximum amounts, above which they must be approved by the central bank. Capital transactions, money market instruments, and derivatives are subject to controls[47].

Private investment in GDP doubled between 1997-2003, mostly reflecting the influx of foreign investment in the phase II of Mozal project, which was concluded in 2003. This ratio dropped in 2004-05, but is expected to increase substantially in 2006 and 2007, since there are a number of foreign investments in mining and mega-projects are in the pipeline. Public investment, notably donor-supported road building and other infrastructure development, increased in 2005 and is expected to grow further in the coming years. Increased overseas development assistance since the completion of HIPC and debt relief is also expected to boost public consumption.

Industrial Policy

The existing industrial policy and strategies of Mozambique was adopted in 1997. According to the policy, the priority sectors are SMEs, national entrepreneurship, and diversification of productive capabilities, output and exports. Only a few sections mention FDI and the regional and international context of industrial development in Mozambique. This policy document, however, has been criticised for not clearly indicating instruments that would allow the government to implement its policies and mobilise the private sector. In practice however, the policies and strategies have not improved the business climate context, which many feel, is not conducive due to so many administrative barriers and unnecessary licensing requirements.

Some estimates suggests that between 1998 and 2000 some 40 percent of SMEs owned by national entrepreneurs closed down in the wake of competition and unsustainable business environment. The sectors included cashew, textiles and food processing. As a result, foreign owned or foreign-local partnership firms almost exclusively dominate investments in manufacturing and most services sectors. Production and exports have become significantly more narrowly specialised, and dynamic sectors of industry with rare exception, are found almost exclusively amongst large, FDI driven firms. Some feel that there is inadequate strategy to develop SMEs within the context of business linkages under FDI, while mega investments are given priority.

For example, only a handful of local owned firms have been able to take advantage of opportunities for industrial linkages with large FDI based projects. In very rare cases only Mozambican firms have managed to establish and benefit from such linkages, mostly because they either have associated themselves with the foreign partners, or they are only affiliates of foreign firms. The lack of information about business development and credit facilities often retards small companies from making use of the business opportunities. There is a public perception that companies, which have connections with politicians and bureaucrats, have been able to find business opportunities. This situation provides undue competitive advantage to the large and FDI based firms against local firms, which also retards competition.

It may be noted in this context that SMEs often play an important role in enhancing economic efficiency, competition in the market place and consumer welfare. Moreover, as competitors are likely to enter as SME first, this is an important aspect of entry barriers or contestability in the market.

Public Procurement Policy

Government procurement policy should ideally have a component of competition policy, since the government is the single largest buyer in the economy and hence plays a significant role in the marketplace. In Mozambique, it is necessary for companies to be registered in the country if they aim to work as independent entities, i.e. not as part of another Mozambique-registered company or consortium. If a company is not registered in Mozambique, it is usually disqualified from working on its own at all in the country, and the government departments will not accept a tender from such a company.

The bulk of the tenders published are governed by two main systems of procurement, overseen by two different government departments. The two systems operate under a completely separate legislation, and require registration on separate databases. In some departments, there are four different procurement policies, some of which are contradictory. But with support from external donors,s the Mozambique government has started a review of the procurement policies.

Apart from the legislated or practical procurement policies being implemented in the various government departments, there is a general tendering practice that is governed by law. This means that in a case of an

47 NORAD, 2002, Study on Private Sector Development in Mozambique

unfairly adjudicated tender, an aggrieved 'bidder' would appeal directly to the law courts for redress, rather than to Central Tender Board.

In principle, the Government does not have any preferential procurement policies. In practice, however, Government departments and agencies generally have a few local companies that tender successfully for all their contracts. Such practices often discourage competition from new entrants. Government tenders are published in the daily government newspaper, and news, which comes out every day from Monday to Saturday. Some of the larger tenders are advertised in the South African and other international media as well.

As the Mozambique Government is financially quite cash-strapped, the external donors mostly fund many of the new contracts put out for tender. Such contracts are usually open to international competitive bidding, but sometimes these tenders favour companies from the funding agency's home country.

Poverty Reduction Action Plan (PARPA)

PARPA is the Poverty Reduction Strategy Paper (PRSP) of Mozambique. Mozambique is presently implementing the second generation PRSP. The overall objective of the PARPA is to reduce the number population living in poverty by 30 percent over 13 years, from 70 percent in 1997 to below 60 percent in 2005 and 50 percent by 2010.

PARPA emphasises economic growth, public sector investment in human capital and productive infrastructure, and institutional reform to improve the enabling environment for the private sector participation in the economy. PARPA underlines that economic growth must be both rapid and broad-based to benefit the poor, and the strategy is to achieve an average growth rate of eight percent for the period 2001-2010.

The sources of growth include capital-intensive mega projects, enhanced productivity and value-added in agriculture and small manufacturing; and expansion in services. These processes would be complemented by public investment directed towards poverty-reduction objectives. The reforms must also focus on creating an enabling business environment for the business sector. PARPA, however, has not focused on the structural reforms needed to stimulate the private sector and ensure fair competition in the marketplace.

The overall growth target of Mozambique includes annual average growth of eight percent in agriculture, focussing on cash crops and increased production of food crops. The promotion of rural development through the provision of basic infrastructure, agricultural extension, and assistance with credit and marketing are important interventions in a country with such a large rural population. There is a need to develop an overall strategy for growth in the private business sector as an integral part of the PARPA. Further tackling delay, corruption and lengthy procedures, and to introduce a more SME-friendly industrial policy is important to achieve the goals.

Industrial and Commercial Code

Until recently, all business enterprises in Mozambique needed licences to operate, irrespective of the size. There have been certain modifications to the code in the wake of recommendations from various business sources and development partners. New licensing regulations were introduced in 1998. They involve simplified procedures and no requirement for licensing of 'Class 3' companies, which is defined as very small enterprises with a working manpower requirement up to three people.

The main concerns of the business sector are that licensing is still complicated and cumbersome, if the company is involved in more than one activity. Licensing requirements are often lengthy and some of them are said to be illogical and expensive in a liberalised business environment. An industrial licence will involve, for example, a topographical map, full drawings of buildings, the number and gender of employees, number of bathrooms, and environmental impact assessment, etc. Preparation of the documents involves several departments of government and involved a very time consuming process.

Further, private sector firms consider the number of inspections carried out by the various departments of government every year as discouraging. It certain cases, inspectors from various ministries and local authorities arrive one after the other and check the same matters. Inspection visits are totally discretionary and often lead to decisions that are seemingly totally arbitrary. This is very much a problem of government culture and attitudes among civil servants. There are a number of reform measures on the card in the wake of continuous advocacy and lobbying by the business sector and development partners and the expected changes include commercial code.

Sector Analysis of the Market

Manufacturing Sector

Major industries in Mozambique include aluminium, cement, oil refining, dairy, glass, textiles, pulp and paper products, wood processing, beer and soft drinks, sugar, salt and food processing. Some of these industry plants are old and use obsolete technology, while some of the new plants have advanced means of production. The hasty exodus of Portuguese settlers, who left the country immediately after independence created severe shortage of skilled manpower in the sector. The situation was exacerbated by the civil war.

As a result, there was a steep decline in the manufacturing sector during post-independent and civil war period, after which there has been a gradual recovery.

Since 1995, production in manufacturing has increased by an annual average of 10.6 percent over 1995-2000. Growth has been particularly strong in construction materials, agricultural processing, beverages, tobacco, and certain consumer goods. The growth is seen as a result of macroeconomic stabilisation, improved access to imported intermediate and capital goods, and the increase in demand resulting from foreign investment and high economic growth. Most manufacturing companies in Mozambique have concentrated in domestic production. .

Mozambique's industrial sector mainly comprises of food processing, petroleum refinery, aluminium, and a few other minor goods for export. Most of these industries (about 80 percent) are located in the two major cities, Maputo and Beira, capital and the second largest city, respectively. Industry's share of GDP has expanded sharply from 16 percent in 1996 to 27 percent in 2004. Other capital-intensive manufacturing industries, such as cement, beverages and tobacco-processing all recorded good performances, subsequent especially to the opening of a cement factory in Nampula and a tobacco factory in Tete province in 2005.

The biggest companies include the brewery Cervejas de Mozambique, of which SAB Miller has majority (60 percent) shareholdings, Coca Cola producer SABCO, cement producer, Cimento de Mozambique, a Portuguese investment and only the cement company in the country, the soap manufacturer, FASOL. MOZAL, which accounts for half of manufacturing output, has made Mozambique one of the world's leading aluminium producers. The project is a joint venture between the minerals and metals group BNP-Billinton, Mitsubishi and the Industrial Development Co-operation of South Africa. The government of Mozambique also has a small share. The smelter is now being extended to a capacity of 500 000 tonnes. Electricity for the firm is supplied from the Cahora Bassa dam through the South African grid and alumina oxide is imported from Australia.

In 2003, the mineral industry of Mozambique produced aluminium, gold, tantalum, and such industrial minerals as bauxite, bentonite and other clays, gemstones, graphite, and salt. The country also produced coal, natural gas, cement, granite, gravel, limestone, marble, and sand.

Mozal now ranks among the most efficient aluminium plants in the world. There is a new specialised port and a major infrastructure development around the plant. The Mozal plant employs around 1000 local staff and 150 expatriates. It has received special treatment in a number of ways from the government; low-priced electricity and minimal red tape being two important elements. There is little doubt that the project is potentially very important for Mozambique to be considered a national champion.

After expanding by 230 percent the previous year, the mining sector grew by 40 percent in 2005, following the completion of the Sasol gas pipeline from Inhambane province to South Africa and the consequent increase in gas production. Foreign investors have stepped up exploration activities in base metals and industrial minerals. Kenmare Resources of Ireland is the lead investor in a new MZN11,340bn(US$450mn) titanium mine and smelter in Moma, which is expected to begin operations in late 2006. Australian and South African–based companies are also initiating the MZN12,600bn (US$500mn) Corridor Sands Titanium Project in Mozambique.

Thus, Mozambique's manufacturing sector is small with production highly concentrated in a few sectors. It also exhibits a low degree of intra-sectoral linkages. Most producers, with the exception of agro-processors such as sugar, cashew, copra, beverages, source their raw materials from abroad mainly from South Africa rather than from the local economy. In addition, manufacturing firms are overwhelmingly inward-oriented. Very few firms export a substantial portion of their output. According to estimates, the industrial sector is working at about half of its capacity. The government is making efforts to develop the industrial sector to its full operational capacity, at the same time encouraging foreign investment in new and diverse industries.

In short, available indicators suggest that Mozambique has a small but growing manufacturing sector. What has changed significantly in recent years is the ownership structure of the manufacturing sector. The radical shift in ownership towards nationalisation and state control, which dominated the economic paradigm in the early years of independence, has been reversed. Privatisation of more than 850 public-owned entities has shifted ownership and control of most manufacturing enterprises into private hands, although the government continues to hold shares in some.

Agro-Based Business

Mozambique has large potential for agriculture development and exports. Only a quarter of 36 million hectares of arable lands is being used for cultivation. Mozambique's soil and climatic conditions are suitable for growing a wide variety of cash crops, including tobacco, maize, cotton, sugar, cashew nuts, tea, copra, rice, citrus and tropical fruits. However,

Mozambique still imports sizeable amounts of foodstuff from South Africa and Swaziland. Imported food items are commonly found in the towns and regions closer to South Africa and Swaziland. Imported food items have competitive edge due to price, packaging, etc over local products, which discourage local production. The agriculture development strategy focuses on raising productivity through increasing extension services and irrigation, improved access to credit, notably by fostering micro-finance institutions, and investment in rural and feeder roads. Agro-based business view that there is inadequate incentive for the production of food crops due to high production cost and import competition. In addition, there is increased production of the main cash crops such as sugar, tobacco, cashew nuts and cotton in the recent years.

Commercial crop production in Mozambique has been presently expanding and diversifying. Investment in sugar and tobacco has boosted agricultural exports since 2003. At the same time, contributions from the traditional export commodities, such as cashews and cotton have fallen; the former due to declining tree stock and the latter from market-driven production swings.

Sugar

Sugar cane is an important cash crop of Mozambique and it employs about 27000 people. The total installed capacity of sugar companies is 320,000 tonnes per annum. The estimated production target is 285,000 tonnes in 2006. The annual export value of sugar is about MZN1,008bn metical (US$40mn). Sugar cane production in particular grew by an estimated three percent in 2004/05 following the 130 percent increase in 2002/03.

Nearly 30 000 hectares of industrial plantations of sugar cane are grown at four operational sites surrounding two sugar mills in Maputo and two in Sofala provinces. Sugar cane production has risen from 386 000 tonnes (1998) to 2.22 million tonnes (2004) due to improved organisation and production practices[48]. Sugar-cane production in the four estates with an area of 30 000 hectares in 2005 was around 2.29 million tonnes.

The recent boom in the sugar sector has been the result of the entry of large South African and Mauritian investments of about MZN7,560bn (US$300mn) for the rehabilitation and partial privatisation of four sugar-processing plants in the Maputo and Sofala provinces, which allowed the country to become a net exporter of sugar. There are four companies involved in sugar production, including the Multinational firm Illovo. The Government in consultation with the sugar producers regulates the domestic prices of sugarSugar marketing is being carried out under an arrangement called DNA marketing, which is controlled by sugar distributors.

The sugar export sector might be affected by the combined effects of the phasing out of the sugar protocol (2006-09) under EU's EBA and the overall reform of the EU sugar regime (2006-15). In order to face the effect of EU reform, sugar companies in Mozambique are working out strategies to switch over to ethanol production.

Box 6.1: Cashew and Sugar Concession: A Saga of Mozambique

In 1995, as part of the liberalisation drive by the World Bank and IMF compelled Mozambique to allow unrestricted export of unprocessed cashew nuts, whose main market was India. The World Bank argued that peasant producers would gain higher prices from the free market. But it did not happen as monopoly buyers in India pushed down the price; transfer pricing also lowered the price paid to cashew producers. The domestic trading cartel in Mozambique also collected larger margins. As a result the peasants producers lost out and nearly 8500 industrial workers in cashew processing units became unemployed. Liberalisation of the trade in cashews was one of the conditions imposed by the World Bank in 1995, in exchange for access to soft loans. The local cashew processing industry has been demanding a total ban on raw nut exports, arguing that the exporters compete unfairly with the industry, and deprive it of its raw materials. The export cartels had such as large influence in fixing the prices of the product.

In 1999, the government imposed a surcharge of 14-18 percent on the export of raw nuts after a study by the Food and Agriculture Organisation (FAO). In the end of 2000 the International Financial Institutions allowed Mozambique to protect its two most important agro-industries Cashew and Sugar as a result of intense pressure from the Mozambican Government, trade unions local business and civil society. In 2000, the IMF Executive Board agreed to a policy under which some cashew factories will be closed down, but the rest will be protected. The protection is two-fold, an 18 percent export duty on unprocessed cashew nuts, plus the local industry given the right of first refusal – to purchase nuts before they are exported. In 2001, Mozambique banned the export of unprocessed cashew nuts. The failed export liberalisation policies on cashew proved has useful to the domestic sugar sector, as IMF has allowed Mozambique to protect its expanding sugar industry.

(Source: Joseph Hanlon, Africa Policy E-journal, 19.02.01) http://www.africaaction.org/

48 FAO, (2005) pp.17

Tobacco

Another major cash crop grown within the peasant systems and out-grower scheme is tobacco, of which production has expanded from 3500 tonnes in 1997 to 50 000 tonnes in 2004. Fresh investment by farmers migrated from Zimbabwe in Manica province has been responsible for the sudden growth of tobacco production by 20 percent recently.

The crop estimate for 2005 was 63 000 tonnes from around 180 000 growers organised through eight companies of which the Tobacos de Mocambique and Mozambique Leaf Tobacco (MLT) are the most significant. This compares favourably with the 50 000 tonnes from 147 000 growers reported in 2004[53].

Mozambique's first tobacco processing plant was opened in Tete in 2005. Before this factory was built, Mozambican producers had to take their tobacco over the border into Zimbabwe or Malawi for processing. The factory is owned by MLT, a subsidiary of the US-based Universal Leaf Africa Company, and represents an investment of MZN1,386bn (US$55mn). The factory hopes to process and export 24,000 tonnes of tobacco in 2005, with an estimated value of MZN1,260bn (US$50mn). The installed capacity of the plant is 50,000 tonnes of tobacco a year. The factory currently employs 1,600 workers, some on a permanent basis and some seasonal.

In the meanwhile, another major tobacco firm Alliance One indicated that it is pulling out of Mozambique in 2007. Alliance One was formed out of a merger between the two US-based companies Dimon and Stancom, both of whom held concessions in the Mozambican provinces of Niassa, Tete, and Manica. They provided peasant tobacco growers with inputs, and purchased their crop under an out grower scheme. The reason for the Alliance One's decision to withdraw was said to be in response to a government tobacco concession, in Chifunde in the Tete district that was withdrawn from Dimon in 2005, and given instead to a competitor, MLT.

According to a recent report, the Government wants tobacco processing in Mozambique, and has so urged the concessionary companies to build processing plants. Only MLT has responded, and has built the second largest processing plant in Africa in Tete City. In response, the government rewarded MLT with Chifunde concession[49].

Cotton

Cotton is a major cash crop and harvests fluctuated from 74,000 tonnes in 1997 and 35,000 tonnes in 1999 to 93,000 tonnes in 2004. Cotton, along with oilseeds, tea, citrus, and horticultural crops, particularly tomatoes, offers alternative sources of revenue to small farmers in the interior districts, where coconuts and cashews are not grown[50].

Cashew and Processed Nuts

Cashew crop is an important source of income for about one million smallholders who remain sole producers of raw cashews, but is also an important source of foreign exchange for the country. Cashew production is still contributing substantially to farm incomes and food supply. Peasant holdings of tens of trees produce around 50,000 tonnes of nuts annually and the export forecast for 2005 was 80,000 tonnes.

Since the beginning of the privatisation process, several new private processing-factories have entered the industry. Between 1995 and 1997 the number of processing factories increased from 12, with an actual working production capacity of 30,500 tonnes, to 16 large-scale factories with a production capacity of 54,500 tonnes in the 1996/97 season. As part of the reform, the World Bank recommended that the government adopt a liberalisation policy in the cashew sector, gradually reducing export tax on raw cashew nuts. This tax represented the only means of protection for the industry. Liberalisation resulted in a rise in the prices of raw cashew nuts for the producer, and the cashew nut processing companies could not compete with exporters. This caused market failures and many domestic processing factories were closed down by 2001.

According to 2004 Data, the Mozambique cashew sector recovered processing capacity with 12 processing plants in operation. But, these are clearly very small and they only employ 2,300 people, and process 8,600 tonnes of nuts. These are all labour intensive units, shelling the cashew nuts by hand. The mechanised cashew factories, which once dominated the sector and made Mozambique a major player in the world cashew trade, remain closed[51].

Maize

Maize is grown mainly by the family farming sector, which currently produces about 93 percent of the locally marketed maize (1996 data). The maize milling industry with an installed capacity of over 50,000 tonnes has the potential to process maize for local consumption. The majority of the mills located in the central and northern regions of Mozambique and those small-scale mills located in the southern region satisfy the demand for milling white maize produced locally.

49 All-Africa.com, 2006-05-19 & 2006.05.08, *Author Agencia de Informacao de Mozambique,* Maputo
50 FAO, 2005
51 Mozambique News, 2004.05.06

Fisheries

This sector is characterised by catch, processing, and conservation of fish products, including shrimp. In 1997, prawns contributed to 76 percent of the total fishery production value. This industry has been very important in terms of external trade where fish products, particularly shrimp, have been responsible for more than one third of export revenue. In 1997, shrimp exports amounted to MZN2066.4bn (US$82mn), representing 36 percent of total exports. Fishing activities are carried out by three industrial firms responsible for 80 percent of shrimp exports. Foreign investment in prawn farming also aided the fishing sector, which expanded by 7.7 percent in 2005, thus reversing a declining trend[52].

Edible Oil

Mozambique has the raw materials to produce a wide-range of oleaginous seeds to supply the local edible and industrial oil factories. These include cotton, copra, sunflower, groundnuts, and sesame. Coconuts play an equally important role in household food economies throughout the coastal belt for an estimated 20 percent of peasant families. Farm families manage 100–200 trees, each producing 100 kg of nuts throughout the year, which may be sold as nuts at Mt 1 000 each or as copra.

Despite this potential, the Mozambican edible oil industry depends on imported raw materials. In 1998, Mozambique imported crude sunflower oil amounting to MZN115.9 bn (US$4.6mn) to be refined locally at the four large oil factories. Besides the oil produced by large factories, there are several micro-enterprises in the central and northern regions of the country that are manually pressing sunflower and sesame seeds to produce cooking oil. The oil produced in micro-enterprises is marketed and sold in rural areas whereas that from large enterprises is marketed and sold in urban and peri-urban areas and villages.

Beverages (alcoholic and non-alcoholic)

This sub-sector is dominated by large-scale companies manufacturing lager beer and carbonated soft drinks, contributes to the Government budget largely through the payment of consumption taxes. Their main raw ingredient, barley malt, is wholly imported whereas maize grits and brown sugar are added as cereal adjuncts come from local industry. Coca Cola is presently the principal manufacturer of carbonated soft drinks in Mozambique, bottling its products in two large factories, one in Maputo and other in Chimoio, and has also developed a third plant in Nampula. South African Braveries is the market leader in beverages production.

There are also two medium-scale soft drink plants in Xai-xai and Manica manufacturing their own brand for the southern and central region of the country, respectively. The factory in Manica is also bottling table water and beer, which is being commercialised throughout the country. Schweppes started bottling soft drinks and tonic water in Maputo. Besides sugar and water, all the ingredients for the manufacture of soft drinks are imported. The small-scale non-alcoholic beverage industry in Mozambique is very small in terms of production volume. They manufacture non-carbonated soft drinks (a mix of sugar, water and flavours).

Services Sector

Services sector is the largest contributor to the economy and its share is 40 percent of the GDP. The major service sector industries in Mozambique are telecom, banking, construction, transport, retail, distribution, and consultancy. Among the service sector, transport and communications grew by 13.2 percent in 2005. Growth in transport reflected investment in roads around the three corridors viz. Maputo to South Africa, Beira to Zimbabwe and Nacala to Malawi/Zambia.

Among the major service sector activities, air traffic decreased by 2.2 percent in 2005 however, probably due to safety concerns about the national carrier, Linhas Aéreas de Moçambique (LAM). Prospects for air travel are improving as LAM is undertaking measures to improve safety and has signed a code-share agreement with Kenya airways to expand Mozambique's international connections. South African airways have dominance in connecting Mozambique with the region.

Telecommunications

Telecommunicacoes de Mozambique (TDM) is an independent state-owned firm responsible for the provision of public telecommunication services. TDM was transformed into a publicly-owned business firm by a government Decree in 1992, as part of the reform process. TDM was restructured to function as a commercial entity with financial autonomy, and it has responsibility for planning, installation and operation of the national and international network. TDM has established commercial linkages with foreign firms on the use of technology to enhance its core business.

TDM is also expanding its infrastructure anticipating competition in the wire-line market. Mozambique was one of the first African countries to reform its telecommunication sector, having partially liberalised the domestic long-distance (DLD) and international long-distance (ILD) segments in 1999, but TDM still enjoys a de facto monopoly on the provision of local, DLD and ILD voice services. This arrangement was initially for five years after the incumbent is privatised, although the exact duration of its exclusivity remains at the discretion of the government. The sale of part or

[52] AfDB/OECD (2006) African Economic Outlook 2004-2005, pg.4

all of TDM was originally slated for 2004, but has yet to materialise. The sale of a majority stake in TDM to a strategic investor is in the pipeline, and a second fixed-line operator is to be licenced by 2007. The challenge now is for TDM to attract the appropriate strategic alliances with which it can successfully deal with the technological challenges of the future. This creates opportunities for international telecommunication firms to enter the market.

The mobile sub-sector has experienced good growth rates since 1997. In a bid to encourage competition, TDM was converted into a limited company in 2003, and its mobile subsidiary 'MCel' was spun off into a standalone company. Vodacom of South Africa entered the market as the second provider of mobile phone services in 2003.

Transportport Logistics

Road and Rail

Mozambique's strategic geographic location makes it a natural regional transport and service hub connecting several countries in Southern Africa viz. Botswana, South Africa, Swaziland, Malawi, Zambia, and Zimbabwe. Mozambique has a long experience in rendering transport and logistical services to the region. Railway and port charges used to make up a large share of the country's public revenue and rail, road and port handling were major service industries.

There are three main corridors of transport through Mozambique. The link between Maputo and Johannesburg are served both by rail and road. The road has recently been renovated as a private investment project and is therefore a toll road. The rail line has been commissioned to Spoornet of South Africa.

Port terminals and operation in Maputo has been gradually privatised and are slowly developing to more modern standards. The second corridor is in the middle of the country and starts at the port of Beira. The port has been extensively renovated in recent years and is among the more modern in the region. The main operation has been to serve Zimbabwean trade, which moves either by rail or road. The northern corridor from the port of Nacala is lined to southern Malawi and Zambia.

According to a 1999 estimate, Mozambique has a total of 30,400 km of roads of which 5,685 are paved and 24,715 km are unpaved. Rehabilitation of the internal transport system has been targeted as a priority for the transport sector through the Roads and Coastal Shipping (ROCS) Programme led by the World Bank. The northern part of the country has poor road and transport network, while the west-east connections are generally better than that of the north-south connections.

The state-owned port and railway company, CFM, has been restructured into a holding company. Together with the Government, it decided to granting concession of the main port and railway systems, as well as to bringing all three-transport corridors under private sector operation despite the job loss of about 12.000 workers. The involvement of the private sector, with the associated increase in competition, is expected to have a beneficial effect on services and costs. The Government's declared objective is to extend the granting of concessions to other tertiary ports. Coastal shipping and air transport are to be liberalised gradually, so as to reduce the costs of domestic and international trade. Though the regulatory frameworks are being adapted, competition in the areas of coastal shipping and domestic air routes is still limited or non-existent[53].

Air Transport

Air traffic sector grew at a rate of 238.2 percent in 2004, in the wake of opening of new entry points to the country, the implementation of the new civil aviation policy, the streamlining of the licensing and aircraft entry procedures, the increase of tourism. Scheduled services on main routes are provided by the state owned airline *Linhas Aéreas de Moçambique* (LAM).

LAM developed financial problems during the early 1990s and managed to sail through with state support and returned to profitability in 1996. Its business success is mainly on based on its domestic monopoly position and consequent ability to charge high prices. An apparent attempt to privatise the airline in 1997 did not work when the privatisation agency *Unidade Técnica para a Reestruturaçäo de Empresas* (UTRE) did not approve bids from foreign and local aviation companies. Subsequently, the government tried other options for restructuring LAM, including making it a limited liability company in preparation for a flotation on the stock market.

Scheduled services to internal destinations but not served by LAM are provided by several private charter airlines and a regular airline. It seems that the Government is not keen to have a fast track liberalisation of the air market and LAM is to retain its monopoly on the main domestic routes. There is a private domestic air service provider called Air-corridor, which, many in the sector feel, faces undue competition from the state run monopoly. Air-corridor has been given licences to cover only five provinces of the country and its effort to expand to other provinces has not been permitted, where as LAM has been allowed to fly to all the provinces. LAM also has flight operations to neighbouring countries.

53 EU-Mozambique country strategy paper, 2001-2007, pp.17

International services are provided from Maputo to Lisbon, Mauritius, Addis Ababa, Johannesburg, Durban, Richard's Bay, Harare, Manzini, Blantyre, and Nairobi by various airlines. International flights from Beira go to Johannesburg, Harare, and Blantyre. A large share of intercontinental travel to and from Mozambique is directed through Johannesburg. South African airlines and LAM are the main carriers connecting between South Africa and Mozambique. The five international airports and 14 principal airports are managed by Airports de Moçambique (ADM)[54].

Shipping and Harbour Service

Shipping industry has improved since mid-1990s when the state shipping company, Navinter, collapsed. The sector was opened to private sector in 1996 and four foreign-owned companies, including the privatised Navinter, now provide container services between Nacala, Quelimane, Beira, Pemba and Maputo, and on to Durban.

Mozambique's three main ports, e.g. Maputo, Beira and Nacala, form the centre of the transport system. The port of Maputo serves South Africa, Swaziland and Zimbabwe, while the ports of Beira and Nacala handle cargo from Malawi, Zambia, Zimbabwe, and occasionally from Botswana and the Democratic Republic of Congo. All of the ports have container facilities. The port of Maputo has reorganised its management, turning several of its terminals, container, citrus, coal and sugar, over to private companies. The Government has granted concession to the ports and railways company, Portos a Caminhos de Ferro de Moçambique, EP (CFM), Mozambique's largest public sector employer, to a consortium of companies[55].

Energy Sector

Mozambique is endowed with huge energy resources. The Cahora Bassa dam is the second largest hydropower installations in Africa with the capacity of 2,074 Mw. Moreover, reserves of natural gas are being exploited and gas is exported via a new pipeline to South Africa. There are explorations to locate oil, which is normally a companion of gas. Mozambique also just started exploring reserves of coal, which are estimated at 10 billions tonnees. In its national strategy to combat poverty, the Government has identified the energy sector as priority areas for investment.

The dam company, Hidroeléctrica de Cahora Bassa (HCB), is 82 percent owned by the Portuguese Government and 18 percent by Mozambique. There is a 1,400 km direct power line to South Africa and the production, at around 2 000 MW, represents more than 90 percent of all electricity produced in Mozambique. There are plans for three additional dams on the Zambezi River, namely the Northern Cahora Bassa dam, the Mpande Uncua dam and the Alto Malema dam, are planned.

Mozambique has liberalised the electricity market and opened up for private-sector generators in July 1997. Mozambique's consumption of energy is among the lowest in the region. Less than three percent of the population has access to electricity and establishing economically viable systems for the transmission and distribution of electricity is an enormous challenge.

The state-owned electricity parastatal Electricidade de Mozambique (EDM) has initiated ways of attracting private investment to improve its operation and coverage. Potential investments that are thought to be viable include power transmission lines to the provincial capitals and rural and urban electrification in certain areas.

A pipeline for transporting methane to South Africa has been developed and the Government has a contractual right to use five percent of the gas from five access points along the pipe. There is also an agreement to establish a link from the pipeline to Maputo in order to use some of the gas in the Mozal aluminium smelter and market the rest in the industrial area. The Government announced that the state owned oil and gas company HCB will be restructured.

The Energy Fund (FUNAE) supports energy project in rural areas, which are otherwise difficult to reach with investment. As part of the programme, FUNAE receives foreign assistance to support the EDM in its reorganisation into a commercial and competitive firm.

Banking/Insurance

The banking sector in Mozambique is comprised of eight commercial banks, all of which are majority owned by foreign firms, mainly from Portugal and South Africa. The sector is highly concentrated with the Portuguese owned Banco Internacional de Moçambique (BIM) holding over 50 percent of all banking assets. The baking sectors reach is largely remains limited to large companies in the urban locations. Mozambique has implemented several reforms in the financial sector, including the creation of an independent Central Bank, Bank of Mozambique and liberalisation of the financial sector. However, the financial system remains quite small and dominated by banking. Mozambique's financial system provides for the most common methods of payment, including open account, letter of credit, cash in advance, and documentary collections etc.

54 EU-Mozambique Country Strategy Paper 2001-2007 and national indicative programme, pp.20
55 Norad (2002) & SADC Review 10th Anniversary: 1997-2006 www.sadcreview. Updated on May 01, 2006.

As part of the reform, liberalisation of interest rates was approved in 1994. Between 1996 and 1997, the government began to sell financial institutions to private buyers. The merger of two banks, BIM and the Commercial Bank of Mozambique (BCM), was completed in 2001. The re-privatisation of Banco Austral to ABSA of South Africa, the purchase of BNP Nedbank by African Banking Corporation, the closing of Credicorp, and more recently, the merger of Commercial Bank of Mozambique (BCI) and Banco de Fomento have created major changes for the banking sector.

Grupo BIM is the dominant player in the Mozambican banking system. Grupo BIM controls 48 percent of the loan market and 52 percent of the deposit market, and has as its majority shareholder the Portuguese Commercial Bank (BCP). The second major player is BCI-Fomento. The other minor players are Standard Bank, Banco Austral-ABSA, and the African Banking Corporation.

The Economist Intelligence Unit reports that the government owns 33 percent of the country's largest bank, BIM, which controls 45 percent of the banking market. The Government has sold its minority stake in Banco Austral, the country's fourth largest bank in terms of assets[56].

Commercial banks in Mozambique are specialised in providing short-term loans, trade-related finance, and fee-based services. Medium-term loans are available, but stiff collateral requirements and high interest rates deter many in the commercial sector. Long-term finance other than mortgage-based lending is not generally available. Leasing is an area of growing commercial bank interest. The range of services offered by domestic banks is limited, and there is a little competition in the sector.

The year 2004 witnessed the entry of more operators in the financial system as well as the merger of BCI-Banco Comerciale de Investimentos and BF-Banco de Fomento, SARL, which was initiated in 2003. The merger between BCI-Banco Comerciale de Investimentos (Incorporating Society) and BF- Banco de Fomento SARL, was finalised in 2004. In 2004, some new institutions joined the banking sector, these includes: SOCREMO (a micro finance bank) and 12 other institutions.

These institutions were given licences for credit activities by Bank of Mozambique, some of these include Associação de Romão, Associação para o Desenvolvimento de Malhazine, Associação de Machava Industrial, Associação 3 de Fevereiro and others.

The micro-finance industry in Mozambique is growing. Capital markets in Mozambique are very small and centred on the Bolsas de Valores de Moçambique (BVM), which opened in 1999. Trading, however, is limited to government bonds and a few corporate bonds. The International Finance Corporation (IFC), United States Agency for International Development (USAID) and Netherlands Development Finance Company (FMO) have provided assistance in developing micro-finance institutions that extend lending service to rural areas (2003).

The insurance and pension sectors are also small. Despite recent privatisation efforts, the insurance market remains dominated by the state-owned insurer.

Legal and Regulatory Framework

This section covers the regulatory framework in key sectors, such as electricity, telecommunications, banking, etc., considering the significant interface between sectoral policies and competition policy and law. Ever since the introduction of economic reform and enhanced private sector participation, the government regarded legislative and regulatory reform, together with enhanced institutional capacity as a strategic goal. The government has prioritised the adoption of legislation that would foster private sector activity and development. In its efforts of simplifying regulations and reducing red tape , an Inter-ministerial Commission for Removal of Administrative Barriers has been set up to oversee the implementation of priority measures of reform.

Telecom Sector

The telecommunication sector in Mozambique has undergone several reforms as part of the liberalisation process. Since 1992, the Government began a strategy that actively encourages private sector participation in the production and delivery of goods and services. The Telecommunications law sets forth the following objectives:

- promotion of the availability of high quality telecommunications services;
- promotion of private investment in the telecommunications sector;
- promotion of fair competition and consumer protection; and
- increased telecommunication access and advanced information services nation-wide.

Article 18 of the Telecommunications Law of 1992 (Law 22/92) prescribes the following regulatory guidelines for the promotion of competition:

56 2006 index of economic freedom, cited: http://www.heritage.org/Research/features/index/country.cfm?id=Mozambique

Table 6.2: Major Firms in the Mining/Manufacturing Sector in Mozambique		
Company/firm	**Sector/Products**	**Stake/Monopoly**
Cervejas de Mozambique	Brewery	SAB Miller has majority stake in it
Coca Cola Sabco (Mozambique)	Carbonated soft drinks	Multinational it has sector monopoly
Sasol	Natural gas	South African investment
Cimento de Mozambique	Cement	Portuguese investment – monopoly
Mozal	Aluminium	SA / Australian investment
Mozambique Leaf Tobacco, Limitada	Tobacco	Subsidiary of US Leaf Tobacco It owns the only Tobacco processing plant in Mozambique and got special concessions
Illovo, a dominant global player and three other companies operate in Mozambique	Sugar	South African and Mauritian investment. The producers receive state protection

"…1. The public telecommunications operator must ensure that all telecommunications operators use the public telecommunications network under equal conditions of competition.

2. When the public telecommunications operator provides complementary telecommunications services or value added services, any unfair competition or abuse of its predominant position is forbidden.

3. The use of circuits rented from the public telecommunications operator is limited to the user himself or to the provision of complementary services and value added services. Their re-sale is forbidden…".

In addition to establishing TDM as an independent company, the Instituto Nacional das Comunicacoes de Mocambique (INCM) was established as an independent regulatory body under the umbrella of the Ministry of Transport and Communication (MTC). INCM is mandated to have responsibilities, including licensing, spectrum management, formulation and interpretation of sectoral policies, international relations, and defining and monitoring compliance.

Banking and Financial services

The banking sector is regulated and supervised by Banco de Mozambique, the Central Bank. Although Mozambique has adopted a number of reforms in the banking and financial sector, including establishing an independent central bank, the financial system remains small and dominated by banking. There are eight commercial banks, all of which are majority foreign-owned. The banking system is recovering from the 2000–2001 banking crisis, during which two large banks were declared insolvent.

As part of its mandate, in 2004, the Central Bank implemented a restrictive monetary policy, which was to deal with the appreciation of the metical against the US dollar (20.8 percent) caused by internal and external factors. This was in accordance with the Government's programme for 2004, which aimed at reducing the interest rates.

The Central Bank exercised its regulatory role in the financial sector and as a result new issuance and amendment of various legislations were made in 2004. The changes include legislation of the credit institutions and financial societies. It gives the Governor of Bank of Mozambique the powers to authorise orders of constitution, revocation of the authorisations, statutes changes, mergers, dissolutions and establishment of credit institutions and financial societies (ICSF's) branches in the country. Previously, these functions were held by the Minister of Planning and Finance.

With regards to the financial sector legislations, the following were the major changes introduced in 2004: laws for credit institutions and financial srvices; approval of the new inter-bank exchange market regulation; widening of the incidence base for the verification of obligatory reserve; and approval of the Decree No. 57 of 2004 on the micro-finance general regulator framework.

The ministry of finance regulates the insurance sector. The insurance and pension sectors are also small. Despite recent privatisation efforts, the insurance market remains dominated by the state-owned insurer, which provides all types of insurance services.

In order to protect the interests of the financial sector, service providers the Associação Moçambicana de

Bancos (AMB)[57] was set up and the association shares information among the members and consults and lobbies on issues of common interest. However, there is no indication that the association is engaged in cartel or restrictive business practices.

Table 6.3: Major Services Sector Business Firms in Mozambique

Serial No.	Company	Sector
1	Maputo Port Development Company, SARL;	Port, logistics
2	M Cell and Vodacom	Mobile phone
3.	Total Mozambique, SARL; Shell Mozambique, Limitada;	Fuel distribution
4.	Banco Austral, SARL; Standard Bank; BIM União Comercial de Bancos, SARL BCM	Banking
5.	Southern Sun Mozambique; Hotel Holiday Inn	Hotel and recreation
6.	South African Airways - regional LAM-the national airlines – national and international Corridor-the private domestic airline	Air transport
7.	Price Waterhouse Coopers Crown Agents	Consultancy
8.	TDM – the public monopoly	Fixed telephony

Energy

In August 1997, a new Electricity Act was approved by the Parliament to define:

- general policy for the organisation of the electrical energy sector and the administration of the supply of electrical energy; and
- general legal framework for electrical energy generation, transmission, distribution and sale within the country, as well as its exportation to and importation from outside the national territory, and granting concessions for such activities.

New municipal legislation was enacted in 1997, giving municipalities certain functions in investment planning and the operation of electricity services in local authorities. The objectives were to follow up the intentions of the Electricity Act reforms through the granting of concessions, including proposals for tariff regulation.

The National Directorate of Energy (DNE) is a central organ of the Ministry of Minerals Resources & Energy, responsible for study, conception and development of energy policies. The organisational structure of DNE was approved in April 1997 by a ministerial decree.

The main tasks of DNE are as follows:

- to study, propose and administer the energy policy in the country;
- to promote the diversification of energy use and optimise the use of various energy sources;
- based on the development of the economic perspectives of the country, to determine environmental issues, to provide the plans and the programmes for the development of the sector;
- to promote and to maximise the rational use of the national energy sources with relevance to the installed capacity, namely, through the encouragement of investors; and
- to promote the co-operation with public and private institutions, national or foreign, in achieving the maximum potential in the technical development and sector regulation.

Water

Under the National Water Policy (NWP) approved in 1995, the Government has undertaken broad reform of water supply provision aimed at moving towards the delegated management, and improving its regulation and financial planning. In December 1998, the legal framework for private sector participation, a regulatory board for water, and a water tariff policy were all approved. With respect to urban provision, the Government completed the contracting out to full private sector management the water supply services in five major cities e.g. Maputo, Beira, Quelimane, Nampula and Pemba in 1999.

The Government also introduced tariff adjustments to ensure the improvement and the sustainability of water provision. An integrated water sanitation and

57 KPMG, 2004, Mozambican Banking Survey (English), Maputo

Table 6.4: Market Structure of Some Manufacturing Industries in Mozambique			
Industry	**Types of Competition (Number of Enterprises)**	**Imports/ year**	**Concentration**
Alluminium	Single company and national champion		Concentrated
Sugar	Four producers Prices of domestic sugar is controlled by the govt. Strong domestic protection through punitive import tariff		Limited competition , as price is regulated in consultation with marketing companies
Tobacco	Eight companies including the large international companies have presence Only one manufacturer with a processing plant of tobacco – MLT and the rest are procurers		Relatively competitive market
Soft drinks	Coca cola and (major player) Schweppes and small firms (small market share)		Highly concentrated – as there is no domestic competition for Coco Cola
Beverages beer	SA Miller has 60 percent share in Cervejas de Mozambique (CdM) – dominant player Manica– is a minor player in the market		Highly Concentrated with the dominance of CdM
Cement	Cimento de Mozambique Single producer – and FDI from Portugal; about 50 percent market share		Limited competition through imports
(Various sources)			

hygiene strategy was completed in 2002. With regard to rural water supply, the Government has begun implementation of a Rural Water Transition Plan, which aims at transforming the planning and delivery of rural water and sanitation services from a supply-driven model to a sustained demand responsive approach, characterised by community management, cost recovery, and the involvement of the private sector.

Transport Policy and Regulation

The transport policy, approved in 1996, identifies the involvement of the private sector in construction and rehabilitation of transport infrastructure, in the management by contract or concession of the ports, railways and airports, and in the companies involved in air services and shipping. Government retains the role of facilitator, responsible for defining policies and creating an environment conducive to investment. It is also responsible for the establishment of regulations, the licensing of transport activities, and supervision and control. The Ministry of Transport and Communications (MTC) is responsible for developing transport policies, as well as for monitoring the efficiency of the sector and the implementation of these policies through specialised institutions and by private operators.

The implementation of the transport policy and the increasing number of concessions of ports, railways, airports etc., has raised the need of economic regulation. The Government policy is to establish an efficient system of economic regulation to protect the interests of the stakeholders – public and private. Coastal shipping and air transport are to be liberalised gradually, so as to reduce the costs of domestic and international trade. Maritime Law (lei do Mar) of 1997 has been completed and adopted to facilitate and increase the capacity of coastal shipping. A decree promulgated in 1998 lays the framework for competition in, and entry into, domestic air routes. While all other routes are now open to entry, LAM has exclusive rights to serve the national trunk route until 2003, after which the route will be open to competition. A strategic private partner is being sought for LAM, which was converted to a limited liability company in December 1998[58]. However, even

58 EU-Mozambique Country Strategy Paper 2001-2007, pg 32

in 2006, the most domestic airline destinations are not open for competition or private participation.

A key element indicated in Mozambique's roads policy is the implementation of institutional reforms to ensure sound, sustainable and commercial management of road infrastructure. In this context, a new Road Management System was established in this law, including the creation of an autonomous entity i.e. National Roads Administration (ANE) to manage the country's roads. Efforts were made to enhance private contributions to the road sector by involving the private sector in decision-making, initiating the privatisation of public works organisations, and strengthening local contractors and consultants.

Market and Competition

The share of the agriculture, industry and services are 25 percent, 35 percent and 40 percent respectively. Agriculture is the main economic activity of the people and about 80 percent of the population depend on it, although its contribution to the GDP is the lowest. The major non-farm economic activities are manufacturing, tourism and several services sector, which are concentrated in the urban centres located mostly in the coastal regions of the country.

Mozambique is characterised by a small economy in terms of volume of economic activities, and for most industries, domestic demand is relatively small. Thus, industry concentration in Mozambique is relatively high probably because a few firms in each sector of economic activity meet domestic demand. High concentration in the industry sector need not always imply market power as free entry of products into Mozambique through trade liberalisation ensures competition on price, choice and quality. In addition, a regulatory practice in the services and utility sectors ensures some amount of competition. Mozambique's legal system has not undergone much reforms and it functional reputation has been marred by undue delays and poor service delivery. According to our interaction during the field survey, the private sector does not always like to depend on the legal system and commercial justice due to delay, cumbersome procedures etc.

Mozambique has a thriving informal sector, which is relatively free from the tax net and numerous regulations of the Government in engaging a commercial / business activity in the country. Informal business sector also has a role in providing competitive prices in many goods and services. The informal sector has low barriers to entry and there are several micro business entities that serve the poor in the semi-urban localities and also rural areas. This sector also reduces the chances for the emergence of a successful pricing cartel in the urban and rural retail sector. In short, the informal sector thrives on the distortion effects of tariff and taxes as well as numerous regulations. Thus, curtailing the informal sector is one of the goals of the organised private business lobbies and the bureaucracy in Mozambique.

Manufacturing Sector

The industrial sector comprises of mining, manufacturing, and energy. The sub-sectors are food and beverage production, chemical and petroleum industries, and non-metallic mineral products. A good portion of the value of industrial production comes from food processing by the small-scale sector, though the share has decreased considerably over the past decade. Mozambique has only scant database on market shares. Information on enterprise turnover, sales, production volume or consumption of inputs is scarce and is mostly in Portuguese. Major manufacturing industries are aluminium, cement, oil refining, dairy, glass, soap, textiles, pulp and paper products, wood processing, beer and soft drinks, sugar, cashew, cotton and tobacco. Some of these industry plants are old and use obsolete technology whereas new industries such as aluminium, carbonated soft drinks are modern.

Aluminium

Mozal, the aluminium smelting plant, has added significantly to the country's industrial production. The first phase of the project had capacity 250 000 tonnes of raw aluminium per year and it extended to a capacity of 500,000 tonnes by 2003[59].

Bauxite

Mozambique is a producer of bauxite in the region. E.C. Meikles (Pty.) Ltd. of Zimbabwe is the producer of bauxite mine, which had an output of 11,793. All of Mozambique's bauxite output was exported in 2003 at a value of MZN213.9bn (US$849,000)[60].

Cement

Cimentos de Portugal, SGPS, SA (Cimpor) held a 65.4 percent stake in Cimentos de Mozambique SARL, which is the country's only cement producer. In 2003, Cimpor increased the combined capacity of the Dondo, Matola, and Nacala plants to 760,000 tonnes / year. National consumption of cement was estimated to have increased to 675,000 tonnes in 2003 from 575,000 tonnes to in 2002 and 313,000 tonnes in 1998. Cimpor's share of the domestic market rose to 88 percent in 2003 compared with 85 percent in 2002[61]. The remaining domestic cement demand was met through imports.

59 Mining Journal, 2003
60 Estevao T. Rafael Pale, National Directorate of Mines, March 15, 2004
61 Cited in Thomas, Ref. (Cimentos de Portugal, SGPS, SA, 2001, pp. 78; 2004, pp. 74)

Table 6.5: Market Structure of Various Service and Utility Sectors in Mozambique		
Sector	**Type of Competition (Number of Operators)**	**Market Share**
Banking	Eight commercial banks-j all of them are majority foreign owned- Portuguese or South African stake. The main players Group BIM and BCI-Fomento. The other minor players are Standard Bank, Banco Austral-ABSA, and the African Banking Corporation.	It is concentrated. BIM has 45 percent of all banking asset. It controls (48 percent loan and 52 percent of interest market)
Insurance	Public sector monopoly	Majority share
Road Transport	Private participation in passenger and freight transport is allowed. The passenger transport operators work like cartels through associations –although prices are regulated by government	Several small providers in the market
Aviation	Domestic: Two firms LAM and Air corridor State run monopoly LAM has unlimited access and Air corridor has only limited routes International: SAA and LAM	Majority market share by LAM SAA has dominance
Public telephone network)	TDM – the state run company has monopoly	Monopoly
Cellular provider	Two companies Mcell- the state owned – major player New entrant Vodacom (2003) and minor share in the market	Latest sector data not available
Internet Services	Oligopoly	
Electricity	State owned firm EDM has monopoly	Monopoly in both urban and rural areas
Petroleum supply and trading	The private participation but prices are regulated	Competitive market
(Various sources)		

Natural Gas

In 2002, energy company Sasol of South Africa invested in the southern province of Inhambane to launch a natural gas project. The undertaking includes the building of an 865 km pipeline between the Mpande and Temane gas fields, in Inhambane, and the industrial complex of Secunda, in South Africa. The Natural Gas project is expected to add about 20 percent to the Mozambique's GDP[62].

Services and Utilities Sector

Services contribute to just over 40 percent of the GDP in 2004. Services comprising transport and communication, commerce, banking, telecom and other services etc., are largely characterised by medium sized enterprises and the dominance of one or two activities. The level of market concentration in the services and utility sector tends to be significantly higher than that of the manufacturing sector. These

62 Mozambique news, 2002

enterprises are often granted monopoly rights that they sometimes auction off to private concessionaires through long term revenue-sharing concessions, as described earlier. Consequently, the market structure of most service industries can be described as monopolistic or oligopolistic.

Hydroelectrica de Cabora Bassa of Portugal operated the Cabora Bassa dam, which had a capacity of 2,075 megawatts (MW). In 2003, production in the electricity sector fell by 14 percent because of rehabilitation and modernisation at Cabora Bassa that reduced the number of generators available for production. Exports to Botswana, South Africa, and Zimbabwe fell and domestic consumption increased because of economic growth and rural electrification[63].

In August 2003, the governments of Mozambique and South Africa signed a memorandum of understanding (MoU) to build a hydroelectric plant at Mepanda Uncua in Tete Province with a capacity of 2,500 MW. The plant was expected to cost MZN3276bn (US$1.3bn).

Mozambique has about 30,400 km of roads, of which approximately 5,700 km was paved. In 2003, the Government rehabilitated 827 km of roads compared with 714 km in 2002 and 1,096 km in 2001[64]. Mozambique's rail network covered about 3,100 km, which included the 600 km Sena rail line. The country has 865 km of natural gas pipelines, 306 km of crude petroleum pipelines, and 289 km of petroleum products pipelines[65].

Reflections on Anticompetitive Practices

A liberal economic order, which provides easy entry and exit opportunities for the producers and various choices to consumers, is useful for achieving economic policy goals such as efficiency, growth, welfare, for all the participants in the market. However, in real life markets are not inherently fair, efficient or open although the ideal market situation, which consumers want to achieve, is competitive and not concentrated. The most commonly referred anticompetitive practices that distort the developing country markets include: price-fixing; cartel arrangements; abuse of dominant position; monopolisation of market; mergers that limit competition; vertical agreements that blocks markets to new competitors; and various entry and exit barriers to new firms.

Economic Transition

Similar to many newly independent countries in Southern Africa, Mozambique also had chosen an economic model where the public sector was the dominant actor for about two decades since independence. The public sector activities spread into all the key areas of the economy and bureaucrats run the business entities. The liberalisation and privatisation programme of the 1980s and 1990s had to not only spearhead transformation of public sector to private sector but also to change the mindset of the policy makers to unshackle the bureaucratic barriers put up against the private sector initiatives. In this process, most of the public sector enterprises, which acted as state monopolies are either being transferred to the private sector or converted into limited liability public sector undertakings. Despite the liberalisation drive, one could find examples of several anti competitive aspects in the policies and laws governing the commercial/business sector and utility sector in Mozambique.

Public Policies and Barriers to Competition

Administrative and other policy-induced barriers often act as barriers to competition in the market. In certain cases, domestic laws and regulations pose barriers to entry for the new players – both domestic and foreign investors. In many developing countries, state owned service and utility firms often receive undue protection, which acts as a barrier to competition. Mozambique is not free from the practice and one could give several examples. An example referred by many is state patronage and exclusive flying right to operate from most domestic destinations granted to state subsidiary LAM, whereas the private airline Air corridor has not been allowed to do so. This allows LAM to overprice for domestic operations, a means to remain in the market despite being inefficient at the expense of consumer welfare.

A serious barrier for entry in the market identified by many in the private sector is the commercial code for the country, which in effect has many hidden provisions of entry barrier. The commercial code has its colonial origin, which provided priority to settler communities in key business sector as against the local people. For instance, even now any investment and commercial activity would require prior approval from the Government. This approval process would take months or years and there are no transparent rules on the decision-making or approving a business. Hence, this bureaucratic process on approval-which is not automatic at all is governed by the commercial code poses as a serious entry barrier for new players in many sectors.

Some of the trade instruments, especially tariff and non-tariff barriers (NTBs) also limit competition in the market. Mozambique applies a variety of non-tariff

63 Agencia de Informacao de Mocambique, 2002
64 Yager, Thomas, R, (2003), The Mineral Industry of Mozambique, PDF copy
65 Thomas R. Yager, (2003)

measures, some of them have little effect on trade, while others intend to reduce imports and benefit local producers. In certain sector, import of raw material or intermediary goods attracts more duty than import of finished products. The sectors where domestic protection is high include textiles, cashew, tobacco, sugar, etc.

In addition, Government gives certain monopoly rights through concessions granted to existing monopolies in sectors such as tobacco, cotton and sugar. Our field interaction with the business sector suggests that when the government gives commercial monopoly rights to a few firms, it discourages the very concept of competition. For instance, 70 percent import duty on sugar provides undue competitive advantage to the domestic sugar companies, irrespective of whether they are efficient or not. Similarly, 18 percent export tax on raw cashew export does not encourage competition, though the intention of the government is to promote local processing. Further, the Government still fixes the prices of a number of goods and services sold in the market.

Barriers to Competition by Private Anticompetitive Behaviour

The perception survey conducted under the project revealed that various types of private anticompetitive practices do exist in Mozambique, including predatory pricing, price fixing, exclusive dealing, monopolisation of upstream markets, etc. Many people felt that certain industries/sectors have almost absolute monopoly of certain companies. For instance, carbonated soft drink is almost an absolute monopoly of Coca Cola and it is difficult for a new entrant to compete the market segment.

Sectoral Regulation and Competition

Regulatory governance policies play an important role in creating a competitive business environment in the market. Although Mozambique does not have a competition policy and law, it has sectoral regulators in many of the service sector business activities such as power, telecom, transport, banking, water etc.

Air Lines Sector

Some indicated that domestic airline industry has entry barrier as it is dominated by the public airlines, LAM and there is only one private sector airline-corridor so far allowed to operate and that too only in five provinces out of 10. The latter's effort to expand to other provinces and also regional flights have not succeeded. Despite liberalisation, domestic airlines sector is not open to foreign companies.

There are regulatory agencies in the electricity, water, banking, telecom, etc., though the effects of regulation are not very evident in the market.

Price-fixing and Other Cartel Arrangements

Price fixing and market-sharing arrangements are prevalent in Mozambique and this has an effect on competition. Some people in the business sector felt that Government has a policy of fixing prices in a number of products such as sugar, medicines, bread, petrol, gas, cotton, etc. This has an effect on the competition in the economy.

In some sectors such as the public transport sector, the operators use their collective bargaining power to fix prices.

Bid-rigging

This practice is common, especially in the construction and public procurement sector, where contractors and suppliers decide the price of the contract in connivance with corrupt officials in the departments. There is inadequate rules and transparency in the system, which encourages the practice.

Abuse of Dominance

Monopoly or dominant enterprises in the market – whether public or private – can engage in many anticompetitive practices. The retail sector in the urban centres is dominated by a few firms and chains, which discourage new entrants. The Government controlled Mcell is the dominant player in the mobile phone sector and it has the ability to control the prices of products, despite the entry of Vodacom, the second serviced provider.

Table 6.6: Do State-owned Monopolies Indulge in Anticompetitive Practices?

Answer	No. of Responses	(in percent)
Yes	38	35.8
No	21	19.8
Can't Say	42	39.6
No Response	**5**	**4.7**

Many viewed that abuse of dominance was evident in the electricity distribution, sector where the state owned power distribution company EDM has monopoly. EDM has very poor service delivery records, due to irregular supply of power and inaccuracies in the billing system. EDM often violates consumer rights through it arbitrary pricing practices where consumers do not have a choice.

As per the field survey of 106 persons under the project, about 50 percent of the respondents suggested that there is state owned monopolies in Mozambique; and only 15 percent perceive that there is none. Among the total respondents 36 percent believed that state owned monopoly firms engage in anticompetitive practices and 20 percent believe that they do not.

Perspectives on Competition

This section analyses the public perceptions on the state of competition in various sectors of the Mozambican economy, including the relevance of competition policy and law in promoting competition in the market place.

This analysis is drawn on the basis of responses and information gathered from about 100 persons through a structured field survey undertaken in early 2006 under the framework of the 7Up3 project. For the purpose of administering the questionnaire, a total purposive sample of 250 persons was identified from various segments of the economy. They were approached with a request to fill in the questionnaire in Portuguese language, mostly by direct visits in areas around Maputo and for other regions by mail. Out of the total requests, 106 persons responded by filling up the questionnaire and also provided additional information. Table 6.7 provides the classification of respondents by the sectors, which they represent.

Table 6.7: Classifications of Respondents

Category	Number of Respondents	%
Public Utilities	8	7.5
Development organisations and Civil Society (Academia, media, civic society and consumer groups, etc)	27	25.4
Services Sector including consultancy, hotel, etc.	25	23.6
Government agencies/departments	19	18.0
Manufacturing	11	10.3
Banking	7	6.6
Business Association and agriculture	5	4.7
Construction	3	2.8
Regulatory organisation	1	0.9
Total	**106**	**100**

Nearly half of the respondents (49 percent) belong to either development organisations, which include academia, NGOs, media etc., or from the service sector business which includes consultancy, hotels, recreation, transport, etc. This is representative as about 40 percent of the GDP derives from the service sector activities. A quarter of the sample (25.5 percent) was drawn from the government agencies/ departments and public utilities. The remaining one quarter of the sample was drawn from manufacturing, banking, construction, business association, and other related activities.

Public Perceptions on Anticompetitive Practices

According to the field survey result (refer table 6.8), 51 percent of the respondents indicated that anticompetitive practices are moderately prevalent in Mozambique, whereas 23 percent considered that it is significantly prevalent and a minority of five percent felt it is hugely prevalent. Among the respondents only 19 percent considered that anticompetitive practices are insignificant or not a serious matter at all in the economy.

Here, these respondents shared their perceptions based on their experiences in a variety of sectors such as trading and distribution, services, and agricultural marketing. Some respondents suggested that collective tendering and price fixing is common among wholesalers and retailers in the trading and distribution sector. Some of the local small scale firms indicated that they face unfair competition from imported products in the market, may be due to domestic policies and also the higher cost of production in the domestic market. Further, many participants in the small scale sector believed that large companies get undue protection and also various concessions from the government, whereas small companies face several barriers are not able to compete in the market.

A stakeholder-wise break up of responses to prevalence of anticompetitive practices in the country revealed interesting results (figure 6.1). It was observed that in addition to a third (36 percent) of the consumers who felt anticompetitive practices were insignificant, a quarter (25 percent) of government officials felt likewise. This was in contrast to the observation in the business community, only 15 percent of who felt that anticompetitive practices were insignificant, with most of them (approximately 80 percent) feeling that the prevalence of anticompetitive practices was moderate to significant in the Mozambican market.

Most Prevalent Anticompetitive Practices

About the economic and welfare effects of anticompetitive practices of firms on consumers in Mozambique, 43 percent said that consumers are significantly affected and 15 percent felt the effect is huge. As against the above, 23 percent felt the effects are moderate and 12 percent felt it is insignificant. It is quite evident that the participants are quite aware of the effect of various market practices of firms on consumer welfare.

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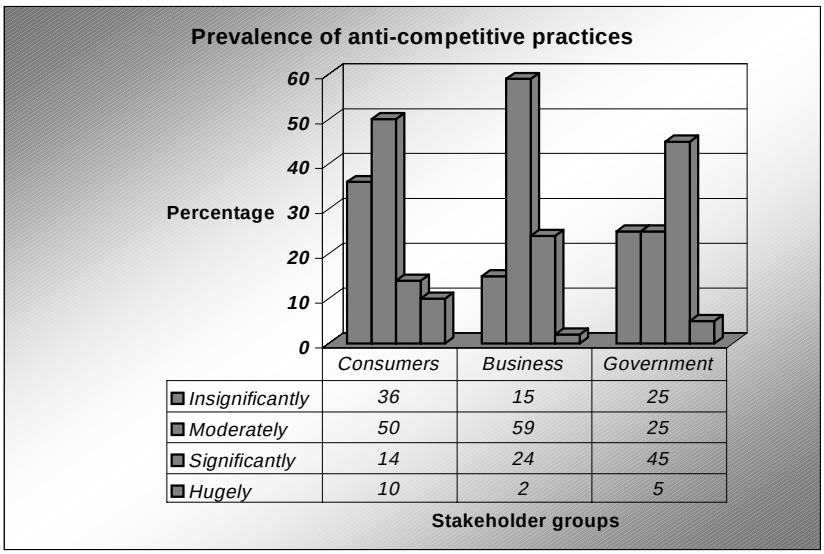
Table 6.8: Prevalence of Anticompetitive Practices			
Type of Responses	**No of respondents**	**(in percent)**	**Comments**
Insignificantly (or not at all)	20	18.8	
Moderately	54	50.9	
Significantly	25	23.5	
Hugely	5	4.7	
No Response	2	1.8	
Total	**106**	**100**	

When asked to indicate the top three most prevalent anticompetitive practices prevalent in Mozambique, the perceptions of the participants vary considerably. (refer table 6.9) Among the major areas of concern identified by participants collective price fixing (34 percent), price discrimination (26 percent) market sharing, bid rigging, exclusive dealing, entry barrier (23 percent) each. The responses suggested that the above are the key areas of concern, though some indicated other areas such as resale price maintenance, refusal to deal and predatory pricing. However, those who suggested earlier that the effects of anticompetitive practices were minimal or negligent did not identify these as serious market distortion issues.

Figure 6.1: Stakeholder-wise Break up of Responses Indicating Prevalence of Anticompetitive Practices



Further, in order to gather the perceptions respondents on the sectors most affected by anticompetitive practices, each respondent was asked to indicate three areas where they consider as important or priority areas. Table 6.10 gives the details of responses. According to the survey result, about 46 percent of the responses indicated that anticompetitive practices are very prevalent in public utility such as water supply, electricity, gas, etc., and in the manufacturing sector. Over one third of the respondents (34.2 percent) identified transport and about two fifths of responses (18 percent) identified agriculture and other services sectors, where one experiences market distorting practices. Incidentally, people perceive that telecommunication and banking are relatively free from anti competitive practices although a public owned company is the dominant player in fixed and mobile services, and a handful of large firms dominate the banking sector.

After considering the prevalence of anticompetitive practices by actors at local and national levels, the stakeholders considered that collective price fixing, and big rigging, predatory pricing, refusal to deal, market sharing, resale price maintenance are common practices at local level as about two fifth of the responses have identified these areas (refer table 6.11).

At the national level, two fifth of the respondents (39 percent) have identified predatory pricing as the single most important issue, 29 percent identified price discrimination as the next serious barrier. Further, about one fifth of the responses indicate collective price fixing, bid rigging and exclusive dealing are also prevalent at national level.

When we analysed the perceptions on the effectiveness of existing laws and regulations (refer table 6.12), two third of the (66 percent) respondents mentioned that the existing rules, regulations and laws are not sufficient to check anticompetitive practices. This indicates the serious weakness in the existing regulatory framework in Mozambique. For example he respondents considered that sector regulators and other institutions do not take serious actions when there are undesirable practices by the dominant players in the market

When asked to comment on the need for a competition law for Mozambique, 83 percent of respondents suggested that the country should adopt competition policy and law to check anticompetitive practices (refer table 6.13). A minority (five percent) believed that a new law is not required as it will not be effective due to systemic issues, while imposing burden on public expenditure. Some respondents viewed that given the present economic governance structure and

Table 6.9: Type of Anticompetitive Practices Prevalent in the Market		
Type of ACPs	**Total no = 105**	**(in percent) in all options**
Collective price fixing	36	34.2
Market sharing	25	23.8
Bid Rigging	24	23.0
Tied selling	13	12.3
Exclusive dealing	24	23.0
Concerted Refusal to deal	17	16.1
Resale Price Maintenance	20	19.0
Price discrimination	27	25.7
Entry Barrier	24	23.0
Predatory pricing	11	10.4
Any other	54	51.4

business environment a competition law and implementing institution can be a toothless body, which cannot achieve its objectives.

Table 6.10: Sectors Most Affected by Anticompetitive Practices		
Sectors	**No of Responses**	**(in percent) in all**
Financial	9	8.5
Transport	36	34.2
Telecommunication	8	8.4
Public utilities (water, electricity, etc)	49	46.6
Manufacturing	48	45.7
Agriculture	19	18.0
Services	20	18.3
Retail	7	6.6
Whole sale	6	5.7
Number of Respondents = 105		

A large majority of respondents (83 percent) viewed that Mozambique required a comprehensive competition policy and law, which should cover all types of economic activities.

As is evident from figure 6.2, there was consensus across stakeholder groups on the need for a competition law in Mozambique to deal with anticompetitive practices. The interesting fact was the overwhelming unanimity in the government circle for the enactment of a competition law. This is in line with the present situation as observed while discussions with various government officials in the country, that the government is committed to developing competition legislation for the country.

The respondents had a pretty good understanding on the importance of market regulation in a liberalised policy environment. According to 69 percent of the responses, the key objective of a competition law should be economic efficiency and consumer welfare. Whereas 24 percent suggested that other socio economic and welfare issues are to be considered while developing the competition law.

When considered across stakeholder groups (figure 6.3), the results indicate that the government is quite clear that a new competition legislation would focus on economic efficiency and consumer welfare. The reaction from the business community was also inclined heavily in favour of a law with similar objectives. However, the views of consumers were a bit skewed, which could be attributed to the level of their understanding.

Perceptions on the Coverage and Implementation Mechanism

As regards the suggestions for implementation mechanism of a competition authority for Mozambique, 53 percent suggested that the authority should be under the government Department/Ministry where as 37 percent preferred to have an authority under an autonomous set up.

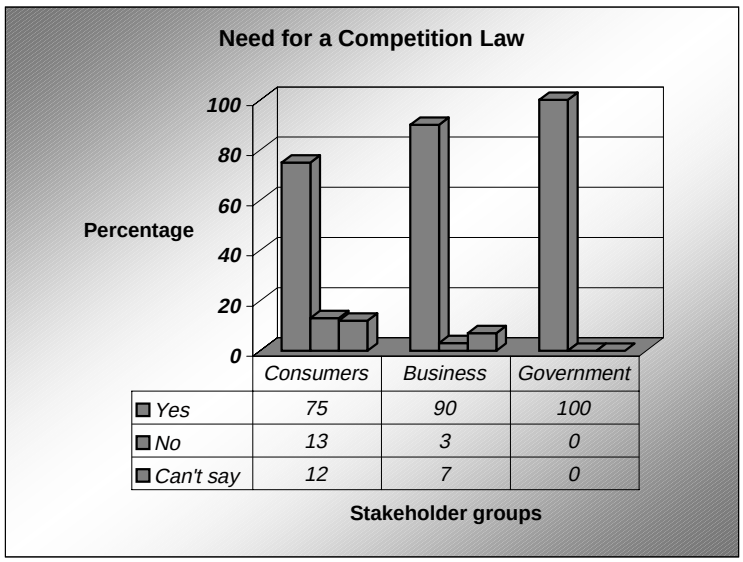
When responses were segregated into stakeholder groups (figure 6.4), it was observed that there was difference of opinion even within the groups,

Table 6.11: Prevalence of Anticompetitive Practices by Level				
Options	**Local**	**percent**	**National**	**percent**
Collective price fixing	24	22.8	24	22.8
Market sharing	19	18.0	16	15.2
Bid Rigging	20	19.0	20	19.0
Tied selling	10	9.5	10	9.5
Exclusive dealing	16	15.2	20	19.0
Concerted Refusal to deal	22	20.9	12	11.4
Resale Price Maintenance	25	23.8	14	13.3
Price discrimination	24	23.8	31	29.2
Entry Barrier	18	17.1	14	13.3
Predatory pricing	21	20.0	41	39.0
Any other	36	34.2	14	13.0

Table 6.12: Effectiveness of Existing Regulations and Laws to Check Anticompetitive Practices?		
Whether the existing laws effective	**Number of Respondents**	**in percent**
Yes	19	17.9
No	71	66.9
Cannot say / Do not know	14	13.2
No Response	2	1.2
Total	**106**	**100**

particularly the government and the business community, with regards the status of the competition authority for Mozambique. While a majority of respondents from both these groups (business– 51 percent and government- 58 percent) were of the opinion that the authority should report to the Ministry / Department, a relatively high proportion of representatives of both the groups (business – 42 percent and government – 37 percent) felt that the competition authority should be autonomous. There was, however, a clear indication among consumers that the competition authority should be under the Ministry / Department concerned.

Figure 6.2: Stakeholder-wise Break up of Responses to 'Need for a Competition Law'



When asked to suggest on the powers of the competition authority for Mozambique, 41 percent suggested that the authority should have both investigative and adjudicative tasks where as 27 percent suggested that the authority should have investigative powers only and 19 percent preferred for court as the better option in adjudicative matters.

A large majority (70 percent) of the respondents suggested that competition law in Mozambique should cover all the enterprises, whereas 20 percent suggested having exemptions given to certain sector of the economy on account of public welfare. Those respondents who proposed exemptions in law for certain sectors clarified that these exemptions should be confined to public utilities, state owned firms, SMEs, rural enterprises and providers of welfare services such as education and health.

Coverage of the Law

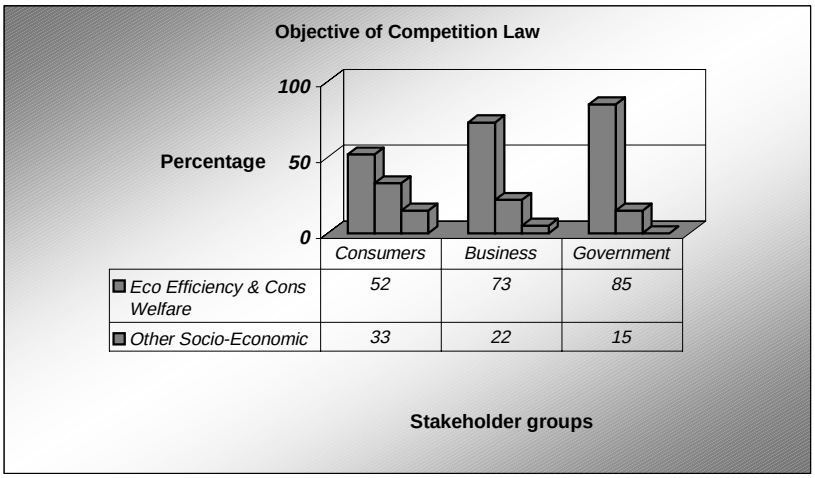
As regards the specific coverage, 57 percent respondents suggested that the law should deal with both unfair trade and consumer protection. Whereas, 25 percent preferred to have separate mechanism for competition matters and consumer protection to avoid overloading the institutions by mixing up both issues. When asked to mention specifically on which agency assists in redressing consumer grievances at present, about 35 percent of the respondents believe that ADECOM (a consumer protection organisation) offers justice to aggrieved consumers in cases of dispute whereas a small number (10 percent) believes that ministry of commerce and industry offers justice to consumers.

Status of Competition Policy and Law

This section analyses the recent developments with regard to the drafting of a competition policy and law in Mozambique. The focus here is on the assessment of the existing regulatory or competition framework that would complement the process. Further, the effectiveness and acceptability of any policy and law depends on the extent to which these instruments have actually

Table 6.13: Preference for the Type and Extent of the Competition Law		
Whether a comprehensive law to check anti competitive practices required?	**No. of Respondents**	**in percent**
Yes, Required	88	83.0
No, Not Required	5	4.7
Cannot say / Do not know	8	7.5
No response	5	4.7
Total	**106**	**100**

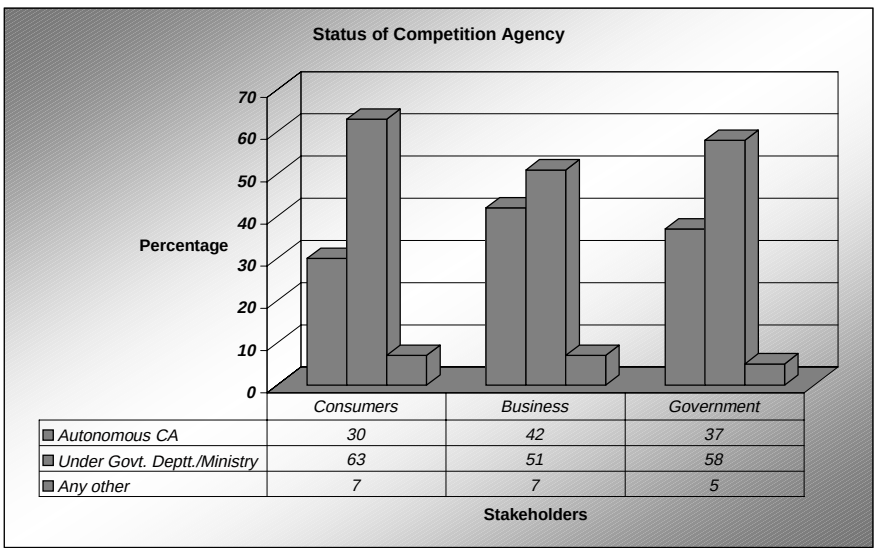
Figure 6.3: Stakeholder-Wise Break up of Responses to 'Objectives of a Competition Law'



evolved in the country in the context of socio-economic developments.

The present market regulation in Mozambique comes about as a result of the liberalisation and structural adjustment programme in the early 1990s. The other factors, which complemented the process are the policy interaction among Government, development partners and international financial institutions, business, and consumers. The decade and a half long economic liberalisation and privatisation has unleashed the market forces in Mozambique, which prompted the Government to think about a competition policy and law for creating an enabling environment for the business. The regional and multilateral initiatives at SADC, WTO and UNCTAD also complemented the new thinking. This does not mean that there is any strong drive for fast track implementation of competition policy and law in the country.

Figure 6.4: Stakeholder Wise Perception on Status of a Competition Agency



Efforts towards Developing Competition Policy

The drive towards competition policy and setting up of regulatory institutions in many countries in Southern Africa has been the result of liberalisation process; external pressure such as that of international financial institutions, regional and multilateral trade agreements, and financial and technical support from development partners and intergovernmental bodies. The recent spread of competition and regulatory institutions in the Southern Africa region perhaps prompted Mozambique to have a national introspection, debate and consultation on the advantage and disadvantages of a domestic competition policy and law and to undertake an assessment of institutional capacity to implement the programme. In this context, Mozambique has taken a cautious and rather slow approach to develop a competition policy and through consultations, capacity building and debate on the subject since 2002.

Apart from the domestic policy context, SADC trade arrangements UNCTAD and WTO capacity building programmes also prompted the country to consider the need for evolving a competition policy regime for the country. For instance, SADC protocol on trade deals with competition policy as well and exhorts member states 'to implement measures within the community and prohibit unfair business practices and promote competition'. In this regard, SADC as well as SACU made some initiatives to go for developing a regional competition policy framework and also to harmonise national competition rules. WTO and UNCTAD have given technical training on competition policy to the countries in the region. The other SADC countries such as South Africa, Zimbabwe, Zambia, have fully grown competition regime, while others such as Malawi, Tanzania, Mauritius, Namibia and Botswana have progress recently in setting up institutional mechanisms on competition.

In 2004, a study supported by the USAID recommended the adoption of a staged approach for developing a competition law in Mozambique. It further prescribed the law to focus exclusively on prohibiting price-fixing behaviour, and suggested the proposed competition agency to take up competition advocacy as a priority activity.

Further, a 'working group' within the Ministry of Trade and Industry was required to be established to serve as the focal point for garnering support, funding, assistance, training, education, and constituency building.

The following tasks were recommended for this 'working group':
·Develop a competition law proscribing naked cartels, prohibiting price-fixing, and empowering a competition agency to review proposed bill or statute within the government;

- Begin developing a competition policy for the country;
- Examine alternatives to competition law enforcement; and
- Plan for a Competition Agency (Authority), which is independent; gradually extends its scope of enforcement; embrace competition advocacy functions.

As a follow up, the Ministry of Industry and Commerce (MIC) established a working group to deliberate the competition policy matters. The Ministry has appointed two officials of the designation of Directors to oversee all activities pertaining to competition policy and law in the country. The 'working group', comprising of various stakeholders, including CSOs has also been constituted. This working group has been meeting regularly and discussing plans of action. The IC has also engaged a lawyer-consultant working on trade and competition policy issues since 2004.

In 2005, UNCTAD organised a training programme in Mozambique, which was attended by working committee members and Government officials. The 7Up3 project was launched in 2005 to do both research and advocacy work on competition policy. In early 2006, Government of Finland supported to host training on competition policy in Mozambique.

Around the middle of 2006, due to some internal reshuffle at MIC, the charge on competition has been shifted to department of internal trade from the external trade department.

The MIC with the assistance of the consultant has started preparing the competition policy and the draft is expected by September 2006. According to the official sources, the policy formulation will be followed by developing the competition law for the country, by the legal department of the government.

Though there is no divergence of views on the need for a competition policy, there is no consensus on the competition law and rules and institutional structure for the authority. There are business lobbies that advocate for adopting a toothless competition authority without investigative and adjudicative powers but as an advisory and reviewing agency due to the following:

They believe that little tradition in competition, limited jurisprudence in the subject, limited capacity to administer laws, little confidence in the legal system, budgetary reasons and many in the business feels that nothing much to gain.

At the same time, the pro-competition lobby and consumer protection agencies are rather weak in the country. The Government does not seem to be very keen on a fast track approach towards developing a competition policy and law.

Conclusion

This section examines the key public policy instruments as well as the structure of some of the sectors of the Mozambican economy, which have a bearing on competition and consumer welfare. It also analyses the perceptions of over 100 stakeholders from a cross section of the economy on the current state of economic regulation, competition and consumer protection. This research study was initiated at a time when there are some concerted efforts at the government level in developing a competition policy for the country. Further, the importance of the study derives from the fact that this is the pioneer effort to gather the views of the stakeholders on market behaviour of firms and suggestions on setting up a competition regime through a structured questionnaire. There have been some efforts in the past to analyse whether the country would require a competition policy and law.

The economic liberalisation and structural adjustment policies of 1990s provided the necessary impetus for enhancing private sector participation as well as competition and efficiency seeking market systems in Mozambique. The privatisation of most of the state owned firms, especially in the utility sector also necessitated the creation of regulatory institutions in the country. Despite this, there are state owned and private monopolies as well as concentration of market power in certain business entities in the country.

In general, the various public policies as well as regulatory statutes aim at enhancing economic growth, investment, efficiency and encouraging private sector participation in the economy. However,

there are still policies and statutes, which discourage competition and retard consumer welfare. The market structure of several firms in the consumer goods and services sectors are dominated by monopolies or oligopolies.

The investment promotion policies of the government focus on attracting mega or large-scale foreign direct investments into the country. In this process, government grants special incentives, concessions as well as protection from imports to companies, irrespective of whether it promotes competition and consumer welfare or not. The instances can be found in goods and services sector, viz. sugar, tobacco, leasing of ports and infrastructure services. At the same time, various administrative barriers to entry due to the application of age-old statues and bureaucratic tendency to check private sector still affect the state of competition. Many in the business sector feel that in order to start a business right contacts with the help from politicians and bureaucrats are required.

The findings of the field survey under the project indicate the prevalence of various types of anti competitive practices in the economy. There is pretty good awareness among the respondents about the negative effects of anticompetitive practices by firms. Most of the respondents viewed that country require a comprehensive competition policy and law to regulate market and enhance public welfare. However, still there are skeptics in the business who feel that a competition authority with investigative and adjudicative powers would not do much good corresponding to the cost, since there are other systemic issues in the economic governance arena, which need to be tackled first. There is, however, optimism among the advocates of competition that the country would adopt a policy and law soon.

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Chapter 7

Competition Scenario in Namibia

Introduction

Namibia is situated on the South-western coast of the African continent, alongside the Atlantic Ocean. The country shares borders with Angola in the north; with Zambia, Zimbabwe and Botswana to the North-east and East; and with South Africa in the South. Namibia is one of the most sparsely populated countries in Africa, if not in the world, with a population of around 2.0 million people on surface area of approximately 824,116 sq km, with a population density of just 2.4 persons per sq km².

Table 7.1: Socio-Economic Indicators: Namibia

Indicator	Value
Current GDP level (NPC 2006)	US$6.0bn
Average GDP growth (1995 – 2004)	3.9 percent
Per capita GDP (US$ p.a.), 2005	1,810
Inflation (2003-2005, December 2001 = 100)	4.6 percent
Gini coefficient (preliminary survey 2003/2004)	0.60
Unemployment rate[66] (Labour Force Survey 2000)	33.8 percent
Population (2005 estimate)	2.0mn
Population growth rate (1991 – 2001)	2.6 percent
Literacy rate (2002 estimate)	83.3 percent
Life expectancy (2002 estimate)	41.5 years

The country is surrounded by two deserts: Kalahari in the South-east; and Namib in the South-west, making it one of the most arid countries in sub-Saharan Africa (SSA), where average annual rainfall ranges between 300 mm to 700 mm. Despite low rainfall, many Namibians are still dependent on agrarian activities (mostly subsistence farming) for their livelihood. Namibia is endowed with a lot of natural resources, making it an important exporter of diamonds, uranium, copper, other minerals, fish and fish products, beef, grapes etc, and benefits enormously from its tourism industry. The diamond mining sub-sector forms the core of the economy, accounting for about 10 percent of GDP and it provides raw materials for further processing, enhancing the country's value adding activities. With per capita income of about US$1,810, Namibia is classified as low middle-income country.

Germany occupied Namibia from the late 19th century (1883), until the end of World War I, following the signing of the Versailles treaty of 1919 in Paris, France. South Africa, acting on behalf of the British Empire, then took over the occupation of Namibia and administered it as a C-mandate[67] until after World War II, when it annexed the territory. In 1966, the South West Africa People's Organisation (SWAPO) launched a guerrilla war for independence of Namibia, setting up its military wing, the People's Liberation Army of Namibia (PLAN). The war was prolonged until 1988, when South Africa finally agreed to end its administration in accordance with a UN peace plan for the entire country. Independence came in 1990 following multi-party elections and the establishment of a constitution. Since then, the country has experienced political stability, which came about through establishment of an independent judiciary, a representative parliament, a free press, and a representative labour system, among other ingredients of democracy.

Policies Affecting Competition

Development Policy

After independence in 1990, Namibia devised its development strategy by formulating and implementing three consecutive development plans to date. These plans set out short-term to medium-

66 Based on a broad or expanded definition of unemployment, which includes all non-working labour force, irrespective of whether they are looking for work or not. The strict definition yields 20.2 percent

67 C-Mandate means that the Territory is to be administered under the laws of the mandatory power

term objectives and strategies for realising such objectives. The three development plans are: the Transitional National Development Plan (TNDP), a three year plan that covered the period of 1991/92 to 1993/94; the First National Development Plan (NDP1); a medium-term plan that covered the period of 1995/96 to 1999/2000; and the Second National Development Plan (NDP2), another medium-term plan that covered the period of 2001/02 to 2005/06. NDP3 has been formulated to cover the period 2006/07 to 2009/10. Recently, a long-term development plan named Vision 2030 has been formulated. This long-term plan captures the aspirations and commitments of Namibians to strive for achieving growth sufficient to reduce maladies of poverty and underdevelopment, and ultimately to attain a developed country status by the year 2030. The first two development plans set four development objectives, which are to stimulate and sustain economic growth; creating employment; reducing inequalities in income distribution; and reducing poverty. Given the increasing importance of gender issues, the need to fight the spread of HIV/AIDS and other diseases, the second national development plan increased these objectives to nine. The country is now pursuing the following development objectives (NPC 2002:50):

- poverty reduction;
- employment creation;
- promoting economic empowerment;
- stimulating and sustaining economic growth;
- to reduce inequalities in income distribution;
- to reduce regional (within Namibia) development inequalities;
- to promote gender equality and equity;
- to enhance environmental and ecological sustainability; and
- to combat the further spread of HIV/AIDS.

Development policy objectives include creating a competitive environment for efficient firms to flourish, but also other issues such as the promotion of small business and the welfare of historically disadvantaged persons, which are of social rather than economic nature. Overall, the development policy gives a picture of how various policies would be linked and compromised for a balanced development. For instance, economic empowerment objective distracts from competition due to the fact that the government is encouraging activities that support the poor, employ historically disadvantaged people, rather than just considering efficiency alone.

Industry and Investment Policies

At independence in 1990, the new Namibian Government started with an economy whose manufacturing sector's contribution to GDP was merely 4.3 percent (average annual contribution for 1980-88). This obviously needed to be changed. The first move towards enhancing manufacturing or value adding activity came in the form of an industrial strategy as set out in the white paper on Industrial Development of August 1992. The industrial policy as enshrined in the white paper embraces the following concepts (GRN 1992):

- the private sector as the leading economic actor;
- overnment creating an enabling environment for the private sector, an environment in which the private sector should prosper but an internationally competitive environment;
- government to create environment geared towards attracting foreign direct investment (FDI) and to develop local capacity through education and training and fostering of entrepreneurial skills;
- consistency in policy-making and implementation;
- proper communication within government as well as between government and the private sector;
- prevention of further creation of monopolies in Namibia, through exposing industry to import competition;
- limited government intervention in the market to situations where it is meant to control monopolies, based on non-economic factors and unfair competition, such as dumping; and
- Increase value addition by stimulating exports and, where efficient, import substitution.

The Namibia Government has made the development of the manufacturing industry a cornerstone of its economic policy. One of the major tools for encouraging export of manufactured products is the setting up of the Export Processing Zone (EPZ) through the EPZ Act (Act no. 6 of 1995). The aim of the government is to attract companies to EPZ regime for them to produce manufactured exports, as well as to encourage skills and technology transfers.

Enterprises that qualify for an EPZ status are those that undertake manufacturing, assembly, re-packaging and break-bulk operation and gear all or almost all of their production for export, earn foreign exchange and employ Namibians.

EPZ enterprises get tax benefits, whereby for an unlimited duration, they do not pay corporate tax, import tax, sales tax, stamp and transfer duties on goods and services required for EPZ activities.

Further incentives include allowance to hold foreign currency accounts with local banks, enjoy industrial calm as no strikes or lock-out are allowed in the EPZ-regime, freedom to locate their operations anywhere in Namibia and having access to Government grants for training purposes.

The Namibian EPZ regime has attracted significant local and international interest, but the practical picture on the ground has been disappointing in terms of a number of companies, which have set up operations of economic significance. The positive

aspect of this is that many firms to whom the EPZ status has been granted did not withdraw their investment out of the economy, but rather moved out of the EPZ to the main stream of the economy. This can be attributed to regional restrictions on importation (into regional countries) of products produced under the EPZ regime. It is often argued that Namibia provides too-generous investment incentives, while the resultant quantity and quality of investment is far below expectations, or too low to justify incentives given. The Foreign Investment Act (Act no. 27 of 1990, amended in 1993) forms the foundation of Namibia's policy on foreign investment. This Act established the Namibian Investment Centre (NIC), which together with the Offshore Development Company are official promoters and facilitators of investment in Namibia. The two are also key promoters of the EPZ regime and the general export-based industrialisation strategy of Namibia. They provide investor information, evaluate investment projects and administer numerous investment incentives.

Manufacturing incentives are applicable to both existing and new manufacturers, in all sectors. Manufacturing activities include local value-addition in the form of processing of Namibia's minerals, fish and agricultural products. Some of the incentives given to entrepreneurs who invest in manufacturing activities are listed below (NCCI 2005):

- Exemption from VAT on purchase and import of machinery and equipment;
- Factory buildings written off at 20 percent in the first year and the balance at eight percent for 10 years;
- Export promotion allowance of 25 percent is deducted from taxable income;
- Additional deduction of incentives for training and production wages of between 25 percent and 75 percent;
- Deduction of 50 percent of cash grants for direct cost of approved export promotion activities; and
- Corporate tax abatement of 50 percent for five years and phasing out of abatement over the following 10 years.

EPZ and investment policies have objectives to promote investment in the country, with some preference given to investments in manufacturing and export-oriented activities. This is to reduce economic dependency on other countries that have developed manufacturing capacities by attracting manufacturing firms, both from outside and within the country. The protection (in form of incentives) given is for specified periods, after which those firms are then expected to be ready to compete internationally. This process does compromise on competition during the period when new firms are protected, and in the medium to long-run competition will be increased because of the more companies.

The white paper of 1992 has an objective to avoid the creation of further monopolies. The maintenance of existing State-owned monopolies can however be viewed as the way to promote national champions. Most of these companies continue to depend on state bail-outs, while those that are self-sufficient in funding their operations have generally failed to improve efficiency e.g., service charges by Telecom Namibia were recently rated to be second highest in a sample of SSA countries.

Trade Policy

Namibia does not have a written trade policy or Act. Unwritten trade policy is anchored on four key elements:

- WTO requirements / obligations;
- SACU Agreement;
- Diversification of exports away from primary to manufactured products; and
- Diversification of export destinations, reaching preferential trading arrangements both at bilateral and multilateral levels to increase market access, and to boast its participation in regional trading blocks as a way to promote greater economic development.

As a member of the WTO, Namibia is committed to facilitate global trade through progressive reductions in all kinds of trade-restricting practices. In this context, the government has undertaken to minimise domestic support by privatising support services such as tractor and seed provisions.

The Southern African Customs Union (SACU) members, i.e. Botswana, Lesotho, Namibia, Swaziland (BLNS) and South Africa have a system of a common external tariff. SACU Agreement has recently been renegotiated, with key elements being revised and given new focus in light of the need to allow BLNS countries greater say in the determination and administration of SACU tariffs. It is through SACU that Namibia has secured bigger markets i.e., mostly the South African market, which allows Namibian industrial planners and business to plan for the wider regional market.

The South African Development Community (SADC) Trade Protocol calls for the removal of all intra-regional tariffs, but does not cover the liberalisation of trade with non-SADC countries. The protocol significantly allows for special treatment for 'sensitive products' (in agriculture and manufacturing), by allowing tariff reductions in these sectors to move at a slower pace than the rest. Under the accord, SADC countries would phase out tariffs on all 'non-sensitive' products by 2008, and by 2012 the grouping expects fully liberalised trade. The implementation of the SADC agreement has been delayed since the year 2000 while negotiators continued to discuss the thorny issue of market access to South African markets, the regional economic powerhouse.

A couple of Namibian products benefit from preferential access under the Cotonou Agreement. As a result of the preferences under this trade pact, a select of Namibian exports enter the EU market duty free. These include an annual duty-free quota for beef to the tune of 13,000 tonnes under the Cotonou agreement. Exceeding the quota means that you should be paying escalating tariffs depending on the excess tonnage. According to the Meat Board of Namibia, the country's annual production of beef amounts to some 100,000 tonnes of which approximately 80 percent is exported (Meat Board of Namibia 2005). Namibia also faces an export quota for seeded grapes, whereby the country is allowed to export seeded grapes to the EU market up to 900 tonnes per annum, which is also below the country's annual grape exports capacity. This is not a completely quantitative restriction, because Namibia can export more that 900 tonnes per year to the EU market, but at escalating tariff rates. Namibia is said to be currently exporting grapes to EU in the range of 12,000 tonnes per annum. South Africa, Namibia's main trading partner, faces lower duties because of its Trade and Development Cooperation Agreement (TDCA) that it has signed with the EU, and this has some negative impacts on Namibia's competitiveness.

Namibia itself employs various barriers to trade. Trade barriers refer to measures undertaken by governments to impact positively on local production capacity, especially manufacturing, increase government revenue and improve the balance of payments (BoP). One can say that in most cases, trade restrictive measures are introduced to restrict competing imports, thereby increasing local manufacturing capacity. The other two effects (on government revenue and BoP) are consequences, and not the primary purpose for which such measures are taken in the first instance. The famous infant-industry argument is both the theoretical and policy rationale for trade barriers. Both developed and developing countries use export subsidies as a way to promote exports. In the case of Namibia, there are no direct export subsidies. What would be equivalent to export subsidies are manufacturing incentives for industrial development, especially in the EPZ regime.

Many countries, including the popular 'Asian tigers', had import-substituting policies during earlier stages of development, but that did not constitute the overall thrust of their economic industrialisation strategies. In the case of Namibia, there are some trade barriers, but the overall policy focus is more outward-oriented.

Tariffs on Imports

Namibia has a set of common external tariffs with the rest of its SACU partners. Inputs of capital and products, which are not manufactured and which do not have substitutes in SACU, bear a zero rate. On the other hand, manufactured goods, or goods with substitutes in SACU generally bear relatively higher tariff rates.

Namibia Agronomic Board

Namibia Agronomic Board issues import licences as per Agronomic Industry Act (Act no. 20 of 1992). There are a number of trade restrictions; amongst them are on pasta (macaroni), milk and maize. In the case of pasta and milk, import levies are applied as a way to protect infant industries in Namibia as it has been provided for within the SACU framework. Despite the existence of the infant industry, South African producers do sell these products on Namibian markets, sometimes at lower prices than those supplied by domestic producers. Claims from the milk industry, for instance, alleges that some of the imported milk is sold at lower prices in Namibia than where it is produced and this may well constitute predatory pricing. Trade restrictions on white maize are in form of temporary border closures for imports (until domestic supplies are depleted) and are basically to protect Namibian producers with the view to develop the domestic industry. The Board tries to ensure that local millers or processors use up Namibian produce before reverting to importing when necessary, and this is accomplished through occasional border closures for imports, accompanied by a floor price. The floor price is determined by considering a five-year average price for the same product in South Africa, recorded by the South African Futures Exchange (SAFEX), transport margins and other issues.

This is good for the purposes of developing domestic industries as producers get guarantees that they will sell their produce and get at least the floor price. On the other hand, the arrangement represents reduced consumer choices and floor price may work to suppress consumers, especially considering that this is being applied on one of basic necessities. Another tool in place to promote domestic industry is the recently introduced Namibian market share promotion for fresh produce, whereby any business trading in horticultural products in Namibia is required to acquire at least 12.5 percent of its total supply from within Namibia. This requirement is revised each quarter and is set to be raised to 15 percent soon. So, there are entry barriers by tariff, temporary border closures and other conditions, but not by complete refusal. Besides, the case of maize, whereby borders are closed, failure to adhere to these requirements for other products such as fruit may mean that you do not get an import permit for the next season. The plight of small and remote traders who find it difficult to source any supplies from the domestic market is under stress.

There are some policy areas that are likely to lead to stagnation rather than industrial growth in horticulture. One being due to the fact that a levy (to

generate revenue for the functioning of the board) is imposed on domestic supply and not on exports, and this leads to producers to target the export markets rather than the domestic market, despite the fact that the country is a net importer of horticultural products.

Meat Board of Namibia

The Meat Industry Act (Act no. 12 of 1981) established the Meat Board of Namibia, among other things, to monitor and control imports and exports of livestock, meat and meat products by means of issuing import and export permits and by conducting inspections at border posts. In essence, this system is not trade restrictive, but is rather meant to, and works to record and manage trade in livestock, meat and meat products. The application of the Act focuses on the monitoring aspect. What is important for the Board is to ensure that health standards are maintained, and if importers do not comply, the Board restricts the import of the product under consideration.

There is also a domestic industry promotion component, which is monitored through the application of levies and other requirements. There is, for instance, a levy on the exportation of raw hides and skins, and to export small stock on hoof, you are required to provide proof that you have slaughtered the same in Namibia. These are non-tariff barriers (NTBs), which are perfectly legal within the WTO as well as SACU framework.

Exchange Controls

Exchange controls are often used to improve the current account of the BoP and at the same time, to give required protection to infant industry. As a member of the Common Monetary Area (CMA), Namibia is bound by the provisions of the Agreement to maintain exchange controls as long as it is necessary. However, with the political transition of 1994 in South Africa, and the coming in force of the WTO agreement in 1995, South African authorities moved to liberalise their trade regime.

In Namibia, the Ministry of Finance has delegated all exchange control powers, functions and duties to the Bank of Namibia, which in turn, has delegated some of the exchange control functions and powers to authorised dealers, which are the country's four commercial banks i.e. Bank Windhoek, Nedbank, First National Bank and Standard Bank. Exchange Control in Namibia is used both to discipline the local demand for foreign currency in order to stabilise the official foreign currency reserves of the country and to allocate available foreign currency in the best interest of the country as a whole (http://www.bon.com.na/content/excon). Restrictions on trading of foreign exchange are not that intense because limits are quite high. The equivalent amounts of foreign exchange allowed are NA$130,000 (US$18,177) per person of 12 years or older and NA$40,000 (US$5,593) per child under the age of 12 years for calendar year. Limits are even higher for things like study allowances and alike (Namibweb.com).

The Bank of Namibia can also be approached on a case-by-case basis through authorised dealers where the transaction, or its amount, does not fall within the general mandate given by Bank of Namibia to the authorised dealers.

Import/Export Licensing

Import licences are required as per existing laws for all imports outside SACU trading zone. According to officials of the Ministry of Trade and Industry, the function of the import licensing section is basically to record and manage imports into the country. There are, however, specific groups of products requiring import permits, of which the following products are not granted automatically: medical and related substances; chemicals; frozen and chilled fish; meat (including game); live animal and genetic materials; controlled agronomic products (maize, wheat, and diary products); pornographic materials; controlled petroleum products; firearms and explosives; diamond; gold and other minerals; and coins and all second hand and used goods such as cloths and vehicles.

In the case of exports, the following specific groups of products require export permits, and are also not automatically granted: medical and related substances; live animals and genetic materials; all ostrich breeding materials (eggs, chickens and birds); meat and game products; protected species (flora and fauna); plants and plant products; propagating materials; firearms and explosives; diamonds; gold and other minerals; coins and bank notes; and works of art which had been in Namibia for more than 50 years, national monuments and archaeological findings.

SME Policy

The national policy and programme on small business development was launched in 1997, with main objectives of promoting employment, reducing poverty and inequality, increasing growth and economic diversification. This is believed to be the sector in which previously disadvantaged persons have the greatest chance of making an impact through effective participation. Five programmes have been devised to realise these objectives. These are:

- access to finance;
- development of markets for small and medium-size enterprises (SMEs) products;
- provision of information on input sources and the promotion of group purchasing schemes;
- development of sites and premises; and
- provision of support training in the form of mentoring and after-care services.

The policy was reviewed in 2004 and is in the process of being revised to address current challenges within the SME sector. The Small Business Credit Guarantee scheme is in place, while the Namibia Chamber of Commerce and Industry, together with the Ministry of Trade and Industry (MTI) provide advice and other necessary services to SMEs. The prevalence of SMEs means that there are more participants in the market and consumers are presented with wider product choices, especially in instances where SMEs are involved in manufacturing activities. The small size of SMEs is usually compensated by public infrastructural facilities (at affordable terms in most cases), training and advance services provided in order to make them competitive. In practice, it is almost impossible to boost competition in technical sectors like financial services and telecommunications through SME policy. The GDP contribution by the SME sector is around 11 percent and the sector is a very important source of employment. The promotion of SME activities may distract competition in the short-run because of incentives given and because bigger firms whose activities have positive effects on SME development are given preference in the government tender system, but in the long-run that is how domestic industries and employment is created and competition increased.

Labour and Employment Policies

The Ministry of Labour and Manpower (now the Ministry of Labour and Social Welfare) was established immediately after independence in 1990. Through this ministry, the government enacted policies and legislation aimed at furthering labour relations, in consistency with other national development goals, i.e. growth, employment etc. This includes policies and legislation to:

- advance persons who have been disadvantaged by past discriminatory laws and practices;
- ensure equality of opportunity for women, particularly in relation to remuneration;
- provide maternity leave and employment security for women;
- promote sound labour relations and fair employment practices by encouraging freedom of association by way of, inter alia, the formation of trade unions to protect workers' rights and interests, and to promote the formation of employers' organisations;
- lay down certain obligatory minimum basic conditions of service for all employees;
- ensure the protection of the health, safety and welfare of people at work and to prevent the abuse of child labour; and
- where possible, adhere and give effect to international labour conventions and recommendations of the International Labour Organisation (ILO).

Having multiple national goals and objectives means that the nation needs to optimise and compromise based on priorities given to various development objectives. Competition and competitiveness are essential to attain economic development through national and international trade. Since the self-interest principle may not always achieve a desirable distributional outcome, the government may need to use other mechanisms to re-allocate resources based on other criteria, rather than on allocative efficiency. In most cases, these criteria are based on the achievement of equity e.g., Namibia has mechanisms (including labour policy and legislation) to correct income imbalances from the past.

The Labour Act

The Labour Act of 1992 established the Labour Advisory Council, labour courts and set out basic conditions of employment, including: maximum working hours; overtime; and annual sick and maternity leave. It regulates the termination of contracts, unfair disciplinary actions, trade unions, employers' organisations and collective agreements. Though information about its actual coverage is not available, it can be assumed that it is limited to regulating employment in the formal sector. The ability of the ministry to enforce the act is also limited due to a small number of Labour Inspectors (Nielsen and Hansohm, 2003).

The office of the Labour Commissioner was enacted through the act of parliament in 1992. This is a neutral office whose main functions include providing advice on labour issues and mediation in conflicts. The 2004 Labour Act replaced the 1992 labour Act. The latest analyses and comparisons of the old and the new Acts indicated that the new legislation is bound to increase costs of labour and possibly hamper production and growth (Lejonhud & Haimbodi 2005:iii). This is mainly due to increased annual leave days, introduction of compassionate leave, increased allowances for maternity leave and other provisions. Having too generous working conditions would mean high business operation costs and local firms will be therefore less competitive internationally. Concerted agreements reached in terms of the labour Act are exempted from the competition law (GRN 2003, section 3(1)). The government is again reviewing the Labour Act 2004.

Social Security Act

The Social Security Act (34 of 1994) requires that every employer and employee to be registered. Every employer registered is entitled to maternity leave, sick leave, and the death benefit fund.

The system provides for the protection against economic and social distress that may be caused by the stoppage or substantial reduction of earnings

resulting from sickness, maternity, injury, unemployment, invalidity, old age, and death. The social security system also provides for medical care, and subsidies for destitute families.

Section 20 of the Act stipulates that employers whose employees are younger than 65 years and who work for more than two days a week, must register with the Social Security Commission as an employer and must register all their employees. A self-employed person who does not employ any person may voluntarily register himself or herself as an employer and employee. The Commission issues a Certificate of Registration to each registered employer, and a Social Security Card to each employee upon registration. Membership contributions include an NA$10.00 (US$1.39) registration fee for each employer / employee and monthly contributions determined as 0.9 percent of monthly salary, but these cannot be less than NA$2.70 (US$0.37) or more than NA$27.00 (US$3.77).

Employment Policy

The National Employment Policy was formulated in 1997, with the following objectives:

- to develop and transform the economy in order to achieve a high rate of growth of per capita GDP;
- to create adequate jobs to absorb the annual entrants to the labour market and to reduce the inherited high levels of unemployment and underemployment; and
- to promote the protection of the working population.

It is also notable that the various policy objectives are not prioritised, nor are any potential conflicts among them accounted for. Most importantly, however, it needs to be noted that the 1997 Employment Policy is not in fact a reference point for the actual policy making process (Nielsen and Hansohm 2003).

Affirmative Action

The Affirmative Action [Employment] Act, 1998 was enacted with the aim of achieving equal opportunity in employment in accordance with Articles 10 and 23 of the Namibian constitution. The main focus of the Act is to enforce equality and fair treatment of all persons when it comes to employment issues. It requires that previously disadvantaged persons, persons with disabilities and women enjoy equal employment opportunities and conditions. The Act established the Employment Equity Commission to enforce affirmative action plan. In fact, preferential treatment has to be given to suitably qualified nationals.

The overall labour policy and regulatory framework is flexible and even more so in some areas such as EPZ where industrial strikes and blackouts are not allowed.

Labour Hire Companies provide labourers to those firms that choose to outsource personnel services. By using this system, firms can avoid having to go through rigidities associated with firing workers and can be more flexible in hiring labourers for seasonal jobs without much commitments. This system has however featured in recent national discussions because to its alleged exploitative nature when it comes to the welfare of labourers and this highlights the weaknesses in supervision of Labour Hire companies by labour inspectors.

This system has potential to constitute unfair competition if competing firms operate under different labour conditions, some having to pay worker benefits, some not. International experience however shows that in the long-run, worker motivation that is achieved through incentives and job security leads to high productivity, implying that firms are likely to go back to employ full-time workers rather than having all of them switching to the labour hire system.

Market and Competition

Nature of Namibian Markets

The Namibian economy is closely linked with the South African economy, the former being a colonial power with distinct features.

Firstly, Namibia has a limited monetary autonomy as it mainly relies on Common Monetary Area (CMA) for monetary policy, practically practiced by South Africa who is the dominant member. Other CMA members are Lesotho and Swaziland. All other CMA currencies are also pegged one-to-one with the South African Rand.

Secondly, most of big firms in Namibia are subsidiaries of South Africa based firms. Finally, Namibia sources over 80 percent of its imports from South Africa, even though some imports originating from other regional countries 'are believed to be mistakenly recorded' as from South Africa as they pass trough the country.

Lastly, Namibia has a small open economy, heavily dependent on trade, with a trade to GDP ratio in the range of 95 percent to 106 percent between 1996 and 2005. Despite having low population, Namibia offers significant market opportunities because of high per capita income, when compared with the rest of the region or continent, but a skewed distribution of income makes the markets less attractive. Most of markets are fairly competitive, for instance the retail industry has attracted a lot of big retailers with shops in major towns. In most instances, competition is becoming limited to those big firms as smaller local firms are forced out of the markets.

One challenge when it comes to promoting competition in Namibia is the business ownership composition, where there are operators in some sectors owned by more or less the same shareholders. Private business managers strive for the goals that maximise the interests of their principals – the shareholders and competition may not be in the interests of shareholders. To increase competition in such sectors, one needs to have new firms from different markets, and with different ownerships and that is a problem for Namibia.

Good examples are in finance and furniture retailing industries. In the retail industry, for instance, there seems to be many firms in the sub-sector, but all of these firms (except one) belong to two holding companies.

Namibia has several monopolies, some of which are considered to be natural monopolies based on infrastructure requirements and the necessity of products they produce and supply to the nation. These include the main three regulated monopolies, which are the telecommunications company (Telecom Namibia), Power Utility company (NamPower) and the Water utility company (NamWater). Plans have been in place to liberalise the telecommunication industry (not much has been said about other sectors) and it looks like it will take a long time before it can happen.

One major barrier to entry is a natural one, which is also common for many developing economies – the shortage of necessary skills. The commercial banking sector is, for instance alleged to charge high handling fees, especially when compared to those in other developing countries. The limit to local skills and infrastructure requirements however make it impossible for the creation of new competitors for any of existing firms in these technical industries such as finance, telecommunications, power etc.

Financial Sector

The Bank of Namibia Act, 1997 (Act 15 of 1997) made provision for the establishment of the Bank of Namibia (the Central Bank) to serve as the state's principal instrument in performing the basic functions of the central bank, including the regulation of the commercial banking sector. The financial sector is very crucial to the economy as it provides finance for industrial development and economic growth. Namibia's financial sector consists of four commercial banks and many non-banking financial institutions. Recent analyses have found oligopolistic competition in the commercial banking, with limited price competition.

The commercial banking sector in Namibia consists of four commercial banks, an investment bank and a savings bank. The commercial banks are: First National Bank (FNB); Standard Bank (STB); Bank Windhoek; and Nedbank. Three of the four banks are branches of South African banks. One of the smaller local banks was recently created, called the City Savings and Investment Bank (CSIB), but it did not last for long. CSIB was fully Namibian owned and was first taken over by the Building Society Company – SWABOU, to form a subsidiary called the SWABOU Bank, which later merged with FNB, the largest commercial bank. The case of CSIB illustrates that it is difficult for smaller institutions to enter the financial sector.

There are clear indications that there is no real price or product competition in the Namibia's banking sector. FNB and Standard Bank hold about 62 percent of total assets and receive about 60 percent of total deposits and loans (Ashipala 2004:7). The ownership composition in the commercial banking is possibly one the obstacles to competition. Competition is however increasingly coming from micro lenders and NamPost bank and the Agricultural Bank.

The non-banking financial sector is regulated by, and firms are registered with the Namibia Financial Institution Supervisory Authority (NAMFISA), which was established in terms of NAMFISA Act, 2001 (Act no. 3 of 2001). NAMFISA operates under the Ministry of Finance and it has an agreement with its South African counterpart, the Micro Finance Regulatory Council (MFRC). This sector comprises of Contractual Savings Institutions (Pension funds, long-term and short-term insurance), unit trusts, cooperatives and micro finance lenders. The non-banking financial sub-sector is also not competitive - at least three biggest institutions dominate the market. Jonathan Andongo and Christoph Stork (2005) made use of the Herfindahl-Hirchman Index and found an oligopolistic market structure for Namibia's banking sector. Their policy brief also found that the size of the banking industry increased by more than 100 percent between 1997 and 2003, measured in terms of total assets. This growth is mainly attributed to four factors:

- Increased demand for banking services due an increasing numbers income earners as historical inequalities continued to be addressed;
- Establishment of new branches in under-banked parts of the country (expansion of local banks);
- Domestic and cross-border mergers and acquisitions leading to economies of scale; and
- Increased competition from non-banking financial institutions such as pension funds and insurance companies.

One can however argue that there have been no significant mergers and acquisitions (M&As) that might have led to economies of scale in Namibia's banking sector. Small banks, which have been taken over by larger banks may have had no major influence on the overall sector at the first place.

Electricity Sector

Of the first attempts to address the challenges and inefficiencies in the Namibia's Electricity Supply Industry (ESI) was the Cabinet decision in 1997 to instruct the Ministry of Mines and Energy (MME) to launch an in-depth investigation into the ESI.

The main objective of the study was to make recommendations on possible future structures, which would enable the ESI to continue being the engine for economic development and prosperity in Namibia in an effective and efficient manner. The White Paper on Energy Policy, released by the MME in May 1998, gave further guidance to the restructuring exercise.

The Electricity Act, 2000 (Act no. 2 of 2000), which came into effect in July 2000 made provision for the establishment of the Electricity Control Board (ECB) to regulate the ESI in Namibia. This Act requires electricity undertakings to be licenced by the ECB, with the main objective to foster competition in generation, transmission and distribution of electricity in Namibia. Thus, the key functions of the ECB are licensing, electricity pricing, standard setting, consumer protection, mediation and dispute resolution, efficiency enforcement and electricity sector development planning (Ashipala 2004:6).

Round three of the ESI restructuring study carried out by Government in 2000 found that there is a need to restructure the industry from a non-competitive vertically integrated system to a more competitive structure (SAD ELEC 2000). Thus the ECB embarked upon the restructuring of the ESI aimed at the creation of a single buyer market structure, creation of Regional Electricity Distributors (REDs) and introduction of a licensing system, which was approved by Cabinet in 2000 (Ashipala 2004:6). In addition to the provision for the establishment of the ECB, the Act also provided for the establishment of four REDs for the North, West, Central and Southern Namibia, which will be opened up for the private sector participation. However, the generation and transmission of electricity is still a monopoly of NamPower, the national electricity provider, while distribution is done by various players, including a number of regional and local authorities. The creation of REDs, which are monopolies (currently fully owned by the state) is likely to increase costs as they are not competing, but they may fulfil the social function of cross-subsidisation of poor local authorities.

Telecommunication Sector

As part of the transition from the pre-independence institutions, the Department of Posts and Telecommunications was dissolved in 1992, and replaced by Telecom Namibia and NamPost. Telecom Namibia, which is a state owned enterprise, was granted a full monopoly over all basic telecommunications services. The Namibia Communications Commission (NCC) created in 1992, as a quasi-independent regulatory body, regulates the telecommunication industry, which has long been scheduled to be fully liberalised by the year 2004.

Telecom Namibia was granted a monopoly licence for five years with the objective of extending telecommunication services in Namibia to facilitate economic development. The plan was to grant telecom Namibia a monopoly status over all basic communication services for a period of five years, while building necessary infrastructures and preparing for deregulation after such period. Once competition is introduced, the NCC would ensure that competition is taking place on fair and equitable terms (Ashipala 2004:6).

In realistic terms, telecommunications seem to constitute natural monopolies, having fixed lines and having to provide some of their services based on social rather than economic reasons. For most of poor localities in rural areas where people's willingness to pay is too low, no private firm may be in the position to supply such necessary services on a competitive basis. This is in itself a market failure or a missing market situation. It is in that light, that governments assume their responsibility of providing social goods.

Due to fast changing technology, with increasing mobile telecommunication networks, it has now been realised that telecommunication products are not subject to the same cost conditions. This has created a number of close substitutes, which weaken the natural monopoly and increasing consumer choice, although the mobile communication service provider (Mobile Telecommunications Limited (MTC) is still using infrastructures of the Telecom Namibia. The mobile telecommunication services has improved since the establishment of MTC in 1995 (Telecom Namibia and MTC are owned by one holding company belonging to the state) and it is effectively competing with Telecom in call services. The Cabinet has recently approved the licensing of the second mobile network operator and this is expected to increase competition and efficiency in the sector once the new company enters the market.

Transport Sector

In the transport sector, the white paper on transport policy (of June 1995) led to the commercialisation of a number of government activities, including the creation of State Owned Enterprises (SOEs) also called Parastatals, in the sector. These include Namibia Airport Company and Namibia Ports Authority in the airports sub-sector, the Roads Contractors Company, Roads Authority and Road Fund Administration in the road sub-sector. The rail network is owned by the government and operated by TransNamib Limited, also a Parastatal.

Probably the most important form of transport to the nation is road transport. Namibia has a fairly competitive, but regulated public transport sector, which consists of short-distance taxis and long distance taxis. All taxis are regulated by the Ministry of Works Transport and Communications (MWTC), as well as by local authorities. Most taxi operators are members of the Namibia Bus and Taxi Association (NABTA), but membership to NABTA is not compulsory. In principle, NABTA consults with the MWTC and local authorities when setting or changing transportation prices.

The only monopoly is in the rail transport whereby it is believed that the market is too small to justify having more than one operator. Transport operators that provide international air and road transport do operate in the country, but only on certain routes.

Competition Legislation

Global Context

Empirical data and experience suggest that economies with greater competition are better able to withstand economic shocks, and have higher levels and rates of growth in per capita GDP (World Bank 2005). This means that trade liberalisation, promotion of inward FDI and encouraging entrepreneurship are profound ways of increasing competition in the domestic market and thereby growth.

Governments often use two basic instruments to enforce a competitive business environment: he competition law and competition authorities. Albeit competition institutions, objectives and enforcement mechanisms do vary across countries, authorities share core objectives of avoiding anticompetitive business practices, trying to enforce competition in markets where it does not exist or is weak and scrutinise new regulations to ensure that they do not induce anticompetitive behaviour in the market. Competition authorities are usually established under competition law. An effective competition policy fosters a flexible, dynamic, and competitive private sector that leads to sustained and widely shared economic development (World Bank 2005). The theoretical rationale of competition policy is to circumvent or deal with market failures resulting from the prevalence of un-competitive market structures and externalities. The emphasis of competition policy is however on market failure arising from abuse of market power (Ashipala 2004:1).

On the global competition issues, reference can be made to the United Nations set of principles and rules on competition. In 1980, the United Nations Conference on Restrictive Business Practices adopted the set of multilaterally agreed equitable principles and rules for the control of restrictive business practices, which were approved by the UN General Assembly during the same year. These principles recognised the importance in international trade and development, of competition and consumer welfare especially relevant for the development needs of developing countries. As such, these are general principles, mainly to provide guidance with respect to the formulation of national, regional or international competition policies. The abridged set of these principles and rules are as below (adopted from UNCTAD 2000):

1. Appropriate action should be taken in a mutually reinforcing manner at national, regional and international levels to eliminate, or effectively deal with restrictive business practices, including those of transnational corporations, adversely affecting international trade, particularly that of developing countries and the economic development of those countries;
2. Collaboration between government at bilateral and multilateral levels should be established, and where such collaboration has been established, it should be improved to facilitate the control of restrictive business practices;
3. Appropriate mechanisms should be devised at the international level and/or the use of existing international machinery improved to facilitate exchange and dissemination of information among governments with respect to restrictive business practices;
4. Appropriate means should be devised to facilitate the holding of multilateral consultations with regard to policy issues relating to the control of restrictive business practices;
5. The provision of the principles and rules should not be construed as justifying conduct by enterprises which is unlawful under applicable national or regional legislation;
6. The extent to which conduct of enterprises is acceptable under applicable legislation should be taken into account;
7. Developed countries should take into account, in their control of restrictive business practices, the development, financial and trade needs of developing countries, particularly the least developing countries (LDCs).

Since the adoption in 1980, this set of principles and rules has been reviewed three times under the auspices of UNCTAD – in 1985, 1990 and 2000. The last review (November 2005) adopted a resolution reaffirming the validity of this set of principles and rules as "UN Set of Principles and Rules on Competition", and called on all member states to implement the provisions of the Set.

Namibian Competition Law

Before independence in 1990, competition issues in Namibia have been regulated by the Regulation of Monopolistic Conditions Amendment Act, 1955 (Act 24 of 1955) and its Amendment versions of 1958, 1975

and 1976. Section 9A of this Act states: "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel" (Legal Assistance Centre, Namlex). This Act was then replaced in South Africa by the Maintenance and Promotion of Competition Act 96 of 1979, which was not made applicable to Namibia. After independence, the Regulation of Monopolistic Conditions Amendment Act was then repealed by the Namibia Competition Act (Act no. 2 of 2003), which is yet to come into force as of now. This Competition Act made provisions for the establishment of the Namibian Competition Commission (NaCC) to implement the Act.

As part of its endeavours to enhance efficiency in the allocation of resources and protection of public interest, the Act set the following specific objectives:

- to promote the efficiency, adaptability and development of the Namibian economy;
- to provide consumers with competitive prices and product choices;
- to promote employment and advance the social and economic welfare of Namibians;
- to expand opportunities for Namibian participation in world markets while recognising the role of foreign competition in Namibia;
- to ensure that small undertakings have an equitable opportunity to participate in the Namibian economy; and
- to promote greater spread of ownership, in particular to increase ownership stakes of historically disadvantaged persons.

GRN 2003 (Act no. 2 of 2003, section 2)

The Act applies to all economic activity in Namibia, or having an effect on Namibia, except the following:

- collective bargaining activities or collective agreements negotiated or concluded in terms of the Labour Act, 1992 (Act no. 6 of 1992);
- concerted conduct designed to achieve a non-commercial socio-economic objective; and
- in relation to goods or services, which the Minister of Trade and Industry, with the concurrence of the NaCC, declares by notice in the Government Gazette, to be exempt from the provisions of this Act.

Furthermore, the Act binds the state, when the state engages in trade or business for production, supply or distribution of goods or provision of any service, but the state is not subject to any provision relating to criminal liability. The Act applies to activities of statutory bodies, except in cases when such activities are authorised by the any law. GRN 2003 (Act no. 2 of 2003, section 3).

Independence, Capacity and Powers of the NaCC

For effective implementation of the competition law, competition authorities need to be independent, having the capacity (authority and resources) to carry out their functions effectively. Hartzenberg (2003:3) argued that it is necessary that the NaCC is independent from the MTI in a sense, for the NaCC to get its funding from somewhere else rather than directly from MTI. Furthermore, the NaCC needs to have adequate human and financial resources, which will enable it to carry out proper research and investigations in order to make sound and informed decisions. From the outset, the Act established the NaCC to be:

- having jurisdiction throughout Namibia;
- independent and subject only to the Namibian constitution and the law; and
- that must be impartial, and must perform its functions without fear, favour or prejudice.

The NaCC is allowed to collaborate or cooperated with its counterparts from other countries on competition related issues. Section 5 (2) of the Act obliges the Minister of Trade and Industry to appoint persons, who are in the opinion of the said Minister, have expertise in industry, commerce, economics, law, accountancy, public administration or consumer affairs. The current situation is that consumers are not represented in various economic decision-making platforms due to the absence of active consumer forums or lobbies in the country. MTI is reportedly in the process of developing parameters to facilitate the establishment of a consumer forum. One would feel that the NaCC is not that independent from political influence based on the fact that one or two Government officials determine the terms rather than the whole Parliament or Cabinet:

- NaCC members are appointed (and re-appointed) by the Minister of Trade and Industry for a term of 3 years with a possible re-appointment for the second consecutive term;
- NaCC members are remunerated as the Minister of Trade and Industry, with the concurrence of the Minister of Finance, may determine; and
- Key decisions by the NaCC require the approval or concurrence of the Minister of Trade and Industry.

Some of the powers of the NaCC, some with the approval of the Minister of Trade and Industry are as below:

- prescribe procedures to be followed in respect of applications and notices to, and proceedings of, the commission;
- prescribe fees to be paid for the purposes of the competition Act;
- prescribe the procedures for investigations under the competition Act;

- prescribe he requirements for the small undertaking;
- NaCC Inspectors have powers to enter and search any premises in the course of their duties;
- to search any person or premises if there are reasonable grounds for believing that the person has personal possession of any document or article that has a bearing on the investigation;
- make extracts from, or make copies of any book or document found on the premises that has a bearing on the investigation;
- use any computer system in the premises, or require assistance of any person on the premises to use that computer system, in the course of their investigation.

GRN 2003 (Act no. 2 of 2003, sections 22 and 34)

Restrictive Business Practices

The rationale for the competition law derives from the need to achieve the best possible efficient allocation of resources in the economy. Which means, the resource allocation that is most beneficial to both producers and consumers are taken together. The underlying objective of the Namibian competition policy is to restrict distortionary effects resulting from:

- Collusive practices
- Abuse of Dominant position
- Mergers

Prohibited Collusive Practices

The theory of competition policy argues that some form of policy intervention is needed to monitor monopolistic behaviour when buyers are numerous and sellers are few due to economies of scale (Ashipala 2004:2). The Namibian Competition Act prohibits practices and arrangements between undertakings that are considered anticompetitive, and thereby detrimental to public interest. The Act prohibits the following conducts:

- horizontal and vertical collusion;
- market sharing;
- collusive tendering;
- price fixing;
- minimum resale price maintenance; and
- bid-rigging.

More exceptions are again made within the Act to promote national socio-economic development goals. This means that the Competition Act is applied in consistency with many other policies and Acts. In this regard, its coverage is limited i.e. it cannot regulate matters agreed under a collective bargaining in terms of the Labour Act, 1992 (Act No. 6 of 1992), concerted conduct designed to achieve non-commercial socio-economic objective and goods and services which the Minister together with the commission declared by notice in the Gazette to be excepted from the provision of the Act. In addition, it does not prevent a supplier or producer from recommending a resale price provided that the recommended price is not bidding and the words recommended price appears next to the price.

Furthermore, the Act makes provision for any undertaking to apply for an exemption from certain restricted practices. Conditional or unconditional exemption for agreements or practices may be granted to firms who apply if such agreement or practice:

- promotes exports;
- promotes small undertakings owned by previously disadvantaged persons;
- improves the production or distribution of goods; and
- promotes technical or economic progress in any industry designated by the Minister.

Other exemptions are based on intellectual property rights (IPRs) and on professional rules. The Commission may, however, revoke the exemption if it is found that the exemption was granted on materially incorrect information, and that there has been significant change of circumstances since the exemption was granted or if the condition upon which it was grated has not been complied with (GRN 2003, section 29).

Abuse of Dominant Position

The Act left the issue of the dominant position to the NaCC and the Minister of Trade and Industry to determine, but it is to be determined in terms of annual turnover and / or the value of total assets. Dominance can be defined as the ability of firms to raise price without losing customers while the abuse of dominant position occurs when firms raise price above long-run marginal cost (Ashipala 2004:3). Under the Namibian Competition Act, 2003, the Minister is allowed or tasked to determine a threshold of annual turnover or value of assets below which an undertaking is not considered to be in a position of dominance. The Act defines abuse of dominant position to include:

- direct or indirect imposition of selling or purchase prices, or other unfair trading conditions;
- restricting production, market outlets, market access, investments and technical development or technological progress;
- applying dissimilar conditions to equivalent transactions with other trading parties; and
- making the conclusion of a contract subject to acceptance by other parties, of supplementary conditions, which have no connection with the subject matter of the contract.

Dealing with Mergers

The Namibian Competition Act defines a merger to occur when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking (GRN 2003, section 40). Thus, a merger

entails an acquisition of, control through purchase of shares, or assets of other undertaking and through amalgamation with other undertakings. This Act prohibits all mergers which are believed to substantially prevent or lessen competition or which are contradictory to public interests.

The theoretical rationale in favour of mergers stands from the economies of scale argument. Larger firms can achieve productive efficiency through increased scale of production, which results in reduced long-run average costs. This can come about when previously small firms combine forces in terms of capital, research and development, production technologies and other forms in order to become competitive in wider markets context.

From the other perspective, mergers do not increase competition in the rest of the economy. In fact, they reduce the number of competing brands, may create conditions for collective dominance and may lead to increased non-price competition and reduce competition at retail level, thereby creating an entry barrier to smaller rivals (Ashipala 2004:3-4).

Parties to the proposed merger are required to give notice to the NaCC, which will then carry out an extensive investigation and then announce its verdict within 30 days, by a notice to parties and in the Government Gazette.

In order to preserve public interests, the following factors are crucial in consideration of a merger proposal:

- Whether the flow of benefits from the proposed merger in the form of enhanced technical efficiency, increased production, efficient distribution of goods and access to markets outweigh the negative effects of the merger;
- The extent to which the proposed merger would lessen competition or restrict trade;
- The extent to which the proposed merger would lead to any undertaking (either involved in the merger or not) acquiring a dominant position;
- The extent to which the merger would affect a particular industry or region;
- The extent to which the proposed merger would affect employment;
- The extent to which the proposed merger will affect the ability of SMEs, especially those owned by historically disadvantaged persons; and
- The extent to which the proposed merger will affect the ability of national industries to compete in international markets.

If parties to the proposed merger are not satisfied with the Commission's verdict on the proposal, the struggle can be long. The Act provides for the right of the parties involved to apply to the Minister to review the Commission's decision. If a merger is implemented in contravention of the provisions of this Act, the Commission may again apply for an interdict restraining the parties to the merger from implementing the merger, to declare the agreement null and void or to impose a penalty.

In the regional context, the Namibian competition law is applicable to issues within the Namibian borders as well as cross-border issues that have effects on the Namibian market. The NaCC is also allowed and tasked with the duty to liaise and exchange information, knowledge and expertise with authorities of other countries entrusted with functions similar to those of the NaCC (GRN 2003, section 16b). It is very important for Namibia to have a competition law that takes into account, regional business activities because most of big firms in Namibia are non-Namibian companies, mainly with their bases in South Africa. Even if the country cannot directly regulate a foreign business, whose activities have negative effects on the domestic economy, it can at least regulate its business activities, say restrict imports if they are found to constitute an unfair trade practice. Allowing the national competition authority to collaborate with their foreign counterparts can as well mean that we are a step closer to reaching a formal agreement on how to collaborate on cross-border competition matters. Such collaboration can be bilateral or multilateral (say a SACU or SADC-wide collaboration).

Implementation of Competition Law

The Namibian Act is still due for enforcement as a law. The Ministry of Trade and Industry is now working on regulations, which will be given to stakeholders for their inputs and the Government will then promulgate such regulations and the Act will be enforced.

Chapter nine of the Namibian Competition Act makes provision for the transitional period, between the promulgation of the Act and enforcement of the Act. According to this chapter, if a merger is effected during this transitional period and such a transaction is concluded after the date of commencement of the Act, such a merger is regarded for a period of 12 months from the date of commencement of the Act, to be a merger implemented in contravention of chapter four of this Act. This presents some investment problems, at least for the time-being. Investors are very cautious and hesitant to implement any joint ventures of significant magnitudes due to uncertainties as to whether such ventures will be allowed to continue or abolished upon the commencement of the NaCC. Namibian consumers appear to be under-represented as national institutions, formally representing consumer interests are at best weak, or non-existent. The Ministry of Trade and Industry is however in the process of setting up or to facilitate the formation of a consumer lobby.

Are we expecting to see the NaCC operating soon? The renewed commitments from the side of the responsible ministry (MTI) are visible in a recent re-thinking and restructuring of its programmes. The importance of competition appears to have been more appreciated, following the renaming of the Registration of Companies, Patents and Trade marks (combined with standards weights and measures) to become the Domestic Market Competitiveness programme (DMCP), which is responsible for the development of policies, regulations and setting up of the NaCC in terms of the Competition Act of 2003. The Minister of Finance presented a rather conservative 3-year rolling budget for the financial years 2006/7 to 2008/9 to parliament on March 16, 2006. The new budget period has seen votes increased from 29 to 30 in order to include a recently inaugurated Anti-Corruption Commission (ACC). Over the whole three-year period, however, the establishment of the Competition Commission has merely been mentioned under the vote of the Ministry of Trade and Industry (under DMCP to be precise), but no financial commitments have been made for the commission. While budget allocations for the whole Ministry are declining in absolute figures, specific allocations to the DMCP are only expected to grow at less than inflation rate over the three years ahead.

Regional Economic Integration

Namibia became a member of the WTO in 1994 as a founding member. The goal of WTO is to try to ensure that member states conduct their business in a transparent and predictable manner. It is expected that all bilateral and multilateral trade agreements would be consistent with the requirements and principles of the WTO. Namibia is a member of SACU, CMA, SADC, the EU-ACP agreement (known as Cotonou Agreement). The country is also having bilateral trade agreements with Zimbabwe and with Angola, other members of SADC, and it has recently dismembered from the COMESA during 2003.

Of all these Regional Trade Arrangements (RTAs), SACU is the most important as far as trade and competition issues are concerned. SACU consists of the regional economic powerhouse in the region – South Africa, and four small countries, namely, Botswana, Lesotho, Namibia and Swaziland, shortly referred to as the BLNS countries. The integration of the Namibian economy into SACU as a Customs Union means that there are no trading borders between member states and many international initiatives and frameworks such as international principles and rules on competition do not apply within Customs Unions.

Though there is no sufficient hard evidence to prove it, there are always outcries from firms based in these small countries about unfair trade practices by the South African companies. As it may be the case in most parts of the world, infant industry protection has been granted to a couple of emerging industries in these small countries, but they grossly fail to take advantage. For Namibia, infant industry status has been granted to two sub-industries within the Agricultural sector – in the Diary (UHT milk) and Milling industries (Pasta), in both cases for an eight-year period running from 2000 to 2008. There are opinions that smaller members of SACU should do something about South African firms instead of keeping complaining, but having the national competition policy should be a starting point before we talk about having a regional competition policy. Against this background, opinions are held that a regional competition policy will not help much, since from the present evidence it has been noticed that competition laws are only enforceable at national level.

Articles 40 and 41 of the 2002 SACU agreement are on competition policy and unfair trade practices respectively. The agreement encourages member states to implement competition policies and to cooperate with each other *vis-à-vis* the enforcement of competition laws and regulations. The SACU council is also charged with the responsibility to develop policies and instruments to address unfair trade practices between member states.

Since most, if not all BLNS countries do not have fully developed competition policies and regulations in place, implementing national frameworks in this context would be the starting point before going further to develop a regional competition policy. It would then be up to national implementing institutions such competition commissions and sector regulators to keep checking for unfair trade practices constantly. It is also important that competition regimes take account of other policies such as infant industry protection to ensure harmony between various implementing agencies since all these issues have a bearing on trade.

The CMA comprises of SACU countries, excluding Botswana. This is a monetary area that centralised monetary policy with the aim of achieving greater financial stability for the region. The monetary policy is controlled by South Africa, and all other CMA currencies are pegged to the South African Rand.

SADC is another regional trading block to which Namibia is a member, but SADC is not yet at an advanced stage like SACU. Of all the member states of SADC, only South Africa and Zimbabwe had fully-fledged competition policy and legislation by the year 2002 (Isaksen 2002) and member states are still in the early stages of reducing trade barriers amongst themselves.

Consumer Protection

To date, Namibia has no consumer protection policy or legislation. Before Namibia's independence in 1990, most of South African laws were applied to Namibia. Some of these old South African laws that are still applicable to Namibia are rather product specific, not applied to general protection of consumers and are mainly regulating credit. Examples include the following (see Legal Assistance Centre):

- Formalities in respect of contracts of sale of land Act 71 of 1969 (amended in 1978), which set necessary formalities for the sale of land or certain interests in land. Section 3 of this Act states that this Act and any amendment thereof, shall also apply in the territory of South West Africa (now Namibia).
- Sale of land on instalments Act 72 of 1971 (amended in 1978), which regulated the sale and purchase of residential land where payments are to be made in instalments over a period of at least one year. Section 19 of this Act states that this Act and any amendment thereof, shall also apply in the territory of South West Africa.
- Credit Agreements Act 75 of 1980 (amended in 1981), which replaced the Hire-Purchase Act 36 of 1942. It regulates transactions where movable goods are purchased or leased on credit. It also applies to services rendered on credit. It is applied to Namibia through section 1 of the credit agreements proclamation (AG 17/1981). Two amendments have been made to the Act since 1981 and before Namibia's independence, but have not been applied to Namibia.

Despite insufficiency on the legal framework, there are still initiatives on the ground, which are aimed at protecting consumers. The Namibia Consumer Lobby (NCL) was established in 1988 with its main goal of protecting the consumer from possible exploitative practices by firms, as well as producing better understanding between producers and consumers. The NCL has a good vision, but struggled to make a significant impact, mainly due to limited human resources and is little known in the country. Further, media coverage of consumer protection issues is very limited and often absent.

In addition, Namibia Financial Institutions Supervisory Authority (NAMFISA) provides consumer education on various services provided by the non-banking financial sub-sector that it regulates. This includes: educating consumers on microlenders; short term insurance; capital markets; medical aid funds; and life assurance and pension funds. This educational information is available on the website, but it may only be accessible by small proportion of consumers with access to computers and Internet since other avenues of disseminating this information are at least not known.

The Ministry of Justice's Law Reform and Development Committee was working on drafting a consumer protection law a couple of years ago, but this has not gone far. According to officials from the Ministry of Trade and Industry, the development of consumer protection legislation will be next on the Ministry's agenda after the completion of the legislation on the national quality infrastructure.

At the same time, the civil society initiatives to establish a consumer group for Namibia is taking some shape, with the emergence of Namibia Consumers Association (NCA), a consumer organisation recently formed that appeared in the media criticising high bank charges in the country. NCA is in the process to be registered, first with the Namibia Non-Governmental Organisation Forum (NANGOF) and then with MTI, following which it would engage more proactively on relevant consumer issues. However, a considerable amount of hand-holding and capacity development of NCA and its staff would be imperative, especially on consumer protection and competition policy issues.

Perspectives on Competition

Survey Tools

The aim of the survey was to document views of consumers, business people and government officials on the state of competition in the domestic economy, with a special focus on the prevalence and severity of anticompetitive trade practices in Namibian markets. A structured questionnaire was used for all types of respondents, but wider views regarding competition issues were collected as well. A total of 85 respondents were interviewed, composed of 30 consumers, 30 business managers or heads of business associations and 25 policy makers/government officials. While consumers were randomly picked at shopping centres, business people and government officials were selected based on their relevant knowledge and experience. Selected businesses were those that are subject to competition in their operations and key respondents were managers/owners for small undertakings or directors/marketing managers for larger businesses. Policy makers were selected from the Ministries of Trade and Industry, Agriculture, Finance, Mines and Energy etc. Other policy makers were sector regulators. The survey was conducted in Windhoek, the capital city where most of business activities are concentrated.

Anticompetitive Practices in Namibian Markets

This section gives the outcomes of the survey for all respondents, with comparisons being made for the three types of respondent, i.e. businesses, consumers and government.

Table 7.2: Prevalence of Anticompetitive Practices, Percentage Distribution of Responses				
	Business	***Consumers***	***Government***	***Overall***
Insignificantly or not at all	23.3	13.3	8.0	15.3
Moderately	23.3	46.7	16.0	29.4
Significantly	30.0	30.0	52.0	36.5
Hugely	23.3	10.0	24.0	18.8
Total	**100.0**	**100.0**	**100.0**	**100.0**

The respondents were asked to rate the prevalence of anticompetitive practices and their perceived effects on consumer welfare. At least 55 percent of all respondents indicated that such practices are significantly or hugely prevalent in Namibian markets, 29 percent said these are moderately prevalent, and the remaining 15 percent said these are insignificant or not prevalent at all. Table 7.2 shows the distribution of responses by different stakeholders.

Government officials indicated that anticompetitive practices are much severe (76 percent said anticompetitive practices are at least significantly prevalent in Namibia); responses by business people were much more evenly distributed, while only 40 percent of consumers indicated huge or significant prevalence (see figure 7.1). Similarly, Government officials felt that the effects of anticompetitive practices on consumer welfare are enormous, but this time followed by consumers than by business people.

It is clear that the votes by business people are widely distributed across the four categories, the majority of consumers (46.7 percent) indicated the ; are moderately prevalent, while the majority of policy makers (52 percent) indicated that anticompetitive practices are significantly prevalent.

Various types of anticompetitive practices were listed and definitions and examples provided to the respondents. Respondents were then asked to list and rank the three most prevalent anticompetitive practices in order importance. Table 7.3 shows that market sharing and collective price fixing are the most ranked number one problems, with 17.6 percent and 15.3 percent respectively. Entry barrier and collective price fixing have been identified by most respondents to be amongst the three most prevalent anticompetitive practices on Namibian markets (last column, table 7.3).

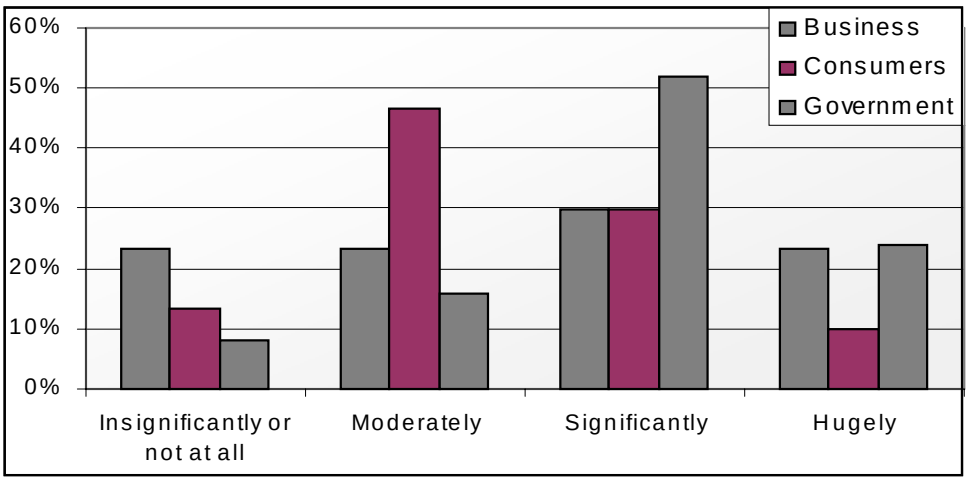
The results also shows that votes are widely distributed amongst various anticompetitive practices, conforming to some views that all listed anticompetitive practices are prevalent in Namibia.

Business people identified entry barrier, price discrimination and predatory pricing as the most prevalent anticompetitive practices, consumers voted for collective price fixing, price discrimination and market sharing to be on top, while policy makers identified collective price fixing, market sharing and predatory pricing as the top three.

Having identified the most prevalent anticompetitive practices, table 7.4 illustrates information about sectors that are believed to be the most affected by anticompetitive practices i.e. sectors in which most anticompetitive practices are prevalent.

The sectors identified to be most affected by anticompetitive practices include retailing, utilities and transport. Utilities, retailing and financial sectors have been ranked number one by most respondents, transport was the most ranked number two, while wholesaling was the most ranked number three. In terms of overall ranks, utilities, financial services and retaining are the most identified sectors, where anticompetitive practices are most prevalent.

Figure 7.1: Prevalence of Anticompetitive Practices in the Namibian Markets



There are no significant differences in the type of anticompetitive practices that are prevalent at local level and those that are experienced nationwide, mainly because operators whose trade strategies give rise to anticompetitive

Table 7.3: Most Prevalent ACPs in Namibian Markets				
	Rank 1	***Rank 2***	***Rank 3***	***All Ranks***
Collective price fixing	15.3	21.2	7.2	14.6
Market sharing	17.6	8.2	13.3	13.0
Bid ridding	1.2	8.2	7.2	5.5
Tied selling	9.4	5.9	12.0	9.1
Exclusive dealing	5.9	8.2	6.0	6.7
Concerted refusal to deal	1.2	3.5	4.8	3.2
Resale price maintenance	15.3	5.9	4.8	8.7
Price discrimination	8.2	11.8	18.1	12.6
Entry barrier	12.9	16.5	15.7	15.0
Predatory pricing	12.9	9.4	8.4	10.
Other	0.0	1.2	2.4	1.2
Total	**100.0**	**100.0**	**100.0**	**100.0**

practices apply their policies nationwide. Given the kind of economic relations of Namibia and South Africa whereby most of the big companies in Namibia are branches of South African entities and the fact that the two countries are members to a customs union, anticompetitive practices in the Namibian markets originates either within the country or from South Africa. About 65 percent of the respondents indicated that anticompetitive practices originates from outside the county as well and this was against a 32 percent of the respondents who said these are purely domestic problems. The remaining three percent chose the option of do not know/cannot say.

Competition issues do not feature much in public discussions in Namibia, and this has come out clearly that most people do not know whether there are competition related rules and regulations in the country or not.

Posing the question whether there are rules and regulations to check anticompetitive practices to ordinary consumers produced a response rate of 53 percent in do not know category, with the remaining percentages equally shared between yes and no. Similar responses have been observed for the business people and Government officials (see table 7.5 and figure 7.2). For all the respondents together, about 52 percent did not know whether there are competition related rules and regulations in the country.

There is a clear indication that the awareness about the existence (or non-existence) of rules and regulations to check anticompetitive practices is low amongst all respondents, as most have chosen don't know/cant say category. Awareness is much better amongst Government officials followed by business people.

About 78 percent of all respondents preferred that a comprehensive competition law that covers all areas of commercial activity and all types of enterprises and persons be put in place. This is pretty much what the Namibia Competition Act (due for enforcement) provides, by covering all commercial activities and making exemptions on a case-by-case basis. Exemption can be granted to entities that promote exports, and entities whose activities are helping in the promotion and development of small undertakings owned by previously disadvantage persons with an intention to make these undertakings competitive, promoting technical progress etc (GRN 2003, sub-section 28).

Over 60 percent of respondents preferred to have an autonomous Competition Authority over other forms of institutional set-ups, emphasising that such an authority can achieve both autonomy in decision making and financial sustainability by being funded in a similar way as the national judiciary. The Competition Act did make provision for the NaCC to be independent, but that independence may well be undermined procedures regarding appointment of commissioners, determination of benefits of the commissioners and the power of the commissioners to make decisions. Furthermore, about 55 percent of respondents prefer that the competition regime should have both investigative and adjudicative powers and around 97 percent feel that it should deal with unfair trade practices and consumer protection issues as

Table 7.4: Economic Sectors Most Affected by Anticompetitive Practices				
	Rank 1	***Rank 2***	***Rank 3***	***All Ranks***
Retailing	20.2	10.8	17.7	16.3
Utilities	29.8	16.9	16.5	21.1
Transport	10.7	20.5	15.2	15.4
Financial sector	19.0	15.7	17.7	17.5
Telecoms	7.1	12.0	7.6	8.9
Wholesaling	8.3	18.1	19.0	15.0
Others	4.8	6.0	6.3	5.7
Total respondents	**100.0**	**100.0**	**100.0**	**100.0**

Table 7.5: Awareness About Rules and Regulations to Check ACPs				
	Business	***Consumers***	***Government***	***Overall***
Yes	6.7	23.3	16.0	15.3
No	36.7	23.3	40.0	32.9
Do not know/cannot say	56.7	53.3	44.0	51.8
Total	**100.0**	**100.0**	**100.0**	**100.0**

its core business. This is well in line with the provisions of the Competition Act. The current procedure is that NaCC would investigate, and impose fines, if necessary, based on its findings. If the fined entity is not happy, then the issue can be taken to the higher court.

Based on the survey, a competition regulator, which coordinates with specialised sectoral regulators (as opposed to having power over sectoral regulators) is slightly preferred over other forms of institutional set-ups. Other institutional arrangements that have been suggested are concerning the number of regulators who have a lot to do with competition e.g. having the competition regulator with power over sectoral regulators or even to have a single utility regulator, combining all specialised regulators. The later is mainly justified on the need to avoid having too big and too many institutions (single regulator requires less support staff), but it also has a bearing on implementation of competition rules. In this case, the prevailing relationship between the competition regulator (NaCC) and specialised sector regulators is that if there is a conflict between NaCC and a sector regulator regarding competition, the decision of NaCC will prevail.

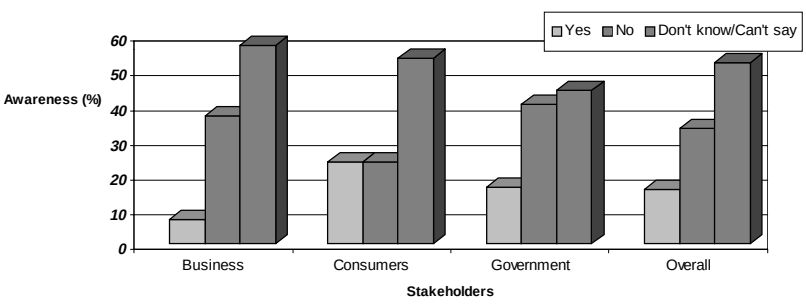
Should NaCC involve different stakeholder group in its functioning? The Competition Commission needs to source information and other inputs from the public and from stakeholders who may be in better positions to know. The question is whether these stakeholders should be involved as part of investigations or any other formal structures of the NaCC. It is good to have different perspectives into an investigation, but there is also fear that various stakeholders will attempt to influence outcomes to suit their particular interests or even make the whole process bureaucratic.

Posing the question to respondents, about 80 percent agreed that stakeholders should be involved, preferably through structured consultative committees. Table 7.6 shows that Government officials prefer more that stakeholders become part of NaCC structures (by 91.3 percent), followed by consumers (87 percent) then by businesses (60 percent).

With the Competition Act not yet into force, and with weak or non-existent consumer forums, there is a concern about how to safeguard the welfare of ordinary consumers who are the most likely to have the least information about markets in which they find themselves as participants. Consumers are not the only vulnerable group as new or small businesses may well find themselves on the receiving end as their competitors may try to eliminate them from markets. The question was posed to all respondents as to how one would react when an anticompetitive practices is encountered.

Despite having no competition law in place and considering limited affordability of judiciary litigation, over 33 percent of respondents indicated they would seek help from judiciary (refer table 7.7). Besides, it emerged shows that the majority of consumers and business people would like to revert to the legislature for help, while the majority of Government officials would seek help from judiciary. The Government does have the policy to intercede in the market when competition is not fair, but limiting such intervening cases is part of the policy objectives as well. Some respondents, who fell into the category 'other', felt that there is nothing an ordinary person can do at the moment given that there is no specific law in place and even more, taking the issue to the high court is not something that many can afford. This is probably the most correct statement as it was made by officials who are in the best positions to know.

Figure 7.2: Stakeholders' Awareness of Rules & Regulations Related to Competition Issues in Namibia



Conclusion

Namibia has four natural monopolies in the telecommunications (Telecom Namibia), utilities (NamWater and NamPower) and rail transport (TransNamib) sectors. The economy faces challenges that include the need to diversify export

Table 7.6: Preferences on Involvement of Stakeholders in NaCC Functioning								
	Business		***Consumers***		***Government***		***All Respondents***	
	No.	*percent*	*No.*	*percent*	*No.*	*percent*	*No.*	*percent*
Yes	12	60.0	20	87.0	21	91.3	53	80.3
No	6	30.0	1	4.3	1	4.3	8	12.1
Do not know	2	10.0	2	8.7	1	4.3	5	7.6
Total	**20**	**100.0**	**23**	**100.0**	**23**	**100.0**	**66**	**100.0**

products and import/export destinations in order to reduce vulnerability. To achieve and build competitive markets, Namibia does not only need to encourage the entry of new firms, but also more importantly new firms with different ownerships and from markets with different characteristics.

Namibia lacks written policy and legal frameworks in areas of trade, industrial development and competition. These shortcomings make it difficult to regulate and control trade and competition related matters in the country and also not having these frameworks in place makes it difficult for the country to embark on regional (SACU) trade competition frameworks.

The prevalence of multinational corporations in the economy (at least in the sense that Namibia is part of SACU), particularly their dominance in developing economies calls for regional or international collaboration on competition issues in order to curb cross-border anticompetitive practices. The Namibian competition legislation makes room for such collaboration, by allowing the NaCC to collaborate with their counterparts outside the country's borders, but Namibia has no trade borders with its main trading partner.

The Namibian Government is one of big producers, making large contributions to its national output. It also maintains monopolies and oligopolies in various markets, the situation which may remain for decades before any serious liberalisation could be witnessed in some of those economic sectors. Examples of such sectors are electricity, water, telecommunications and transport industries.

The Namibian Competition Act (2003) is underway for implementation. Under this Act, competition related developments that take place over the period of 12 months before the enforcement of this Act will be subjected to the scrutiny of the NaCC, i.e. competition related developments over this period are required to comply with the provisions of the Act as well. All cases regarding Restrictive Trade Practices (RTPs) will be recorded and dealt with once the NaCC comes into operation. What this means to hesitant investors is that there is more uncertainty when making some business decisions, which may involve acquisitions or mergers because the competition law will basically come in place 12 months before the enforcement of the Act and the subsequent commencement of the NaCC.

The Act makes provision for the establishment of NaCC, as an independent body subject only to the Namibian constitution and has jurisdiction throughout Namibia. This independence may however be limited as political approval is required in most of decisions that NaCC would make. Furthermore, at most two Ministers determine the benefits of the NaCC members. The usual preference is that the benefits of the commissioners be determined by the Parliament, and that the Competition Commission should remain responsible to the Parliament and to the Constitution of the Republic.

There is no clear sign of the NaCC commencing with its full functions in the very short term because of the following:

- The NaCC is not explicitly catered for in the current 3-year National Budget, which runs from 2006 to early 2009. However, since this is a rolling budget, there is nothing preventing us from believing that

Table 7.7: Necessary Action Against Anticompetitive Practices								
	Business		**Consumers**		**Government**		**All Respondents**	
	No.	*percent*	*No.*	*percent*	*No.*	*percent*	*No.*	*percent*
Legislation	14	48.3	19	63.3	3	12.0	36	42.9
Judiciary	11	37.9	6	20.0	11	44.0	28	33.3
Consumer Forums	2	6.9	2	6.7	4	16.0	8	9.5
Other	2	6.9	3	10.0	7	28.0	12	14.3
Total	**29**	**100.0**	**30**	**100.0**	**25**	**100.0**	**84**	**100.0**

financial resources may be allocated for the establishment of the Competition Authority as from April 2007;
- Upon the enforcement of the Competition Act, and official inauguration of the NaCC, Commissioners and the Minister of Trade and Industry will have to determine procedures and other issues left open by the Act (to be gazetted) before they can start. Examples include the need to prescribe criteria for determining whether a firm has a dominant position or not; the Minister with the occurrence of the NaCC may need to determine classes of mergers to be exempted from provisions of chapter four and so on;
- The Minister needs to give notice in the Gazette about the date when this Act or various provisions thereof should come into operation, which means that the whole competition law would not be expected to come into operation at the same time.

It is however expected that NaCC will be funded from other sources when it commences with its operations.

Despite the fact that consumers are not a minority group in any sense, consumer interests are under-represented in Namibia. Namibia still does not have a consumer protection law in place; no effective consumer lobby at the moment; and consumer welfare sections in regulatory institutions and in private businesses operate voluntarily with no real obligations. It is however the responsibility of the state (not only Government) to ensure that consumers are organised, empowered and be brought on board as key stakeholders in policymaking. There is some hope on the horizon with the recent establishment of the Namibia Consumer Association (NCA). In view of the fact that the Government had already embarked on an exercise to operationalise a Consumer Protection Act for Namibia, it is recommendable that the Government accelerates this process, and facilitates the activities of NCA.

From the survey that was conducted as part of this report, entry barriers, collective price fixing and market sharing came out on top as the most prevalent anticompetitive practices, but ranking votes were widely distributed, conforming to the view that most types of anticompetitive practices are prevalent in Namibia. The sectors identified to be the leading ones in which anticompetitive practices are most prevalent are utilities (water and electricity), financial services and general retailing.

The awareness of respondents about competition related rules and the status of the current competition regime are rather weak and one can only expect that to improve once the competition authority is in place and when the activities of consumer associations are intensified.

Note: This chapter has been researched and written by Rehabeam Shilimela of the Namibia Economic Policy Research Unit (NEPRU), Namibia. The author acknowledges the comments received from the members of the Project Advisory Committee. Comments and suggestions on the structure and content of this paper were also received from Dirk Hansohm of NEPRU, Namibia and Nitya Nanda of CUTS C-CIER and incorporated appropriately.

Chapter 8

Competition Scenario in Uganda

Introduction

Uganda remains one of the poorest countries in the world, with low per capita income and high rural poverty. A series of household expenditure surveys during the 1990s show that the percentage of Ugandans living below the poverty line of approximately US$1/day has declined markedly, from 56 percent in 1992 to 35 percent in 2000, but recently increased to 38 percent. The significant decline in poverty has been linked to considerable economic growth and expansion of the economy for most of the 1990s.

Sovereign trade and investment liberalisation has been a key to Uganda's economic performance since the mid-1980s. Along the path of this development was the realisation that anticipated transformations would require attraction of foreign donors and investors and creation of conditions for rapid economic recovery.

Uganda's recent performance testifies to what liberalisation and economic reforms could achieve in a poor, devastated economy. It is vital to note that continuation and consolidation of the process is crucial in the rebuilding of the economic structure; trade policy, in particular, the creation of a domestic trading environment devoid of traditional command-economy era biases.

Enhanced international integration, based on commitments under the EAC, the WTO and the COMESA, in spite of several teething and fundamental concerns, are helping to ensure that the momentum of reform spurs resource efficiency, provides market potential for emerging industries, and encourages long-term development of trade and investment.

Virtually, all restrictions have gone since the introduction of automatic licensing under far reaching trade reforms in 1991 in both the export and import trade sub-sectors. The restrictions, policy remnants from the pre-1987 economic liberalisation drive, were largely crafted to protect local industries that were predominantly state-owned. Now the private sector dominates and there is considerable competition in all spheres of economic activities.

Laissez faire policy developments like those governing privatisation and investment led to a huge influx of foreign capital and rapid expansion of the private sector amidst debate as to the right extent of state regulation of conduct in private sector spheres.

However, since the adoption of market-oriented economic policy entailed the withdrawal of the state from the industrial and service sectors so as to make way for private initiative, the environment required fresh examination. This was because the customary efficiency of private capital does not necessarily translate into an improved economy, as a market made up of private actors will not necessarily be competitive. As was predictably established in several recent studies including *Competition and Consumer Protection Scenario in Uganda* carried out CONSENT in 2003 with support from CUTS International the local market is replete with anticompetitive practices. The growth of FDI, trade, regional and sub-regional economic integration and cooperation have led to practices such as restrictive business practices, including price cartels, market sharing, among some of the undesirable and deleterious practices. These practices, if not checked, could adversely impact upon competition and therefore are inimical to consumer welfare, as well as economic prosperity of Uganda.

Anticompetitive practices may constitute an obstacle to the achievement of optimal economic growth, trade liberalisation and economic efficiency within the country and in the immediate region or beyond.

It is well established that even if all other structures are in place to support a market-oriented system, it cannot be assumed that the private sector will operate independent of each other in the marketplace, or that the interaction of market forces will automatically maximise consumer welfare. Therefore, it is pertinent that the state intervenes to protect competition by prohibiting agreements and activities that undermine consumer welfare. This intervention takes the form of competition policy.

Table 8.1: Vital Socio-Economic Statistics on Uganda

POLITICS & GEOGRAPHY	
Geographical location	East Africa, astride the Equator, land locked
Geographical neighbours	Kenya, Tanzania, Sudan, Democratic Republic of Congo, Rwanda
Administrative system, structure	Decentralised system with central government retaining role of policymaking, supervision and admin. Units - 76 districts
Area	241,038 sq km (93,072 sq miles)
Life expectancy	45 years (men), 47 years (women) – UN
Population distribution	82 percent rural, 18 percent urban
System of government	'No party' movement system, transiting to multiparty democracy after 2006 elections
SOCIAL & HISTORICAL POINTERS	
Historical background	Former British protectorate, stable before independence but chaotic afterwards (turmoil, unrest, economic decline)
Major languages	English (official), Kiswahili, Ganda
Major religions	Christianity, Islam
Number of phone lines	1,500,127 mobile, 100,056 fixed (5 percent penetration) – MoFPED, June 2006
Access to electricity	5 percent of population (250,000 connections - ERA)
Access to clean water	60 percent (national), 55 percent rural – 2004 (DWD)
Literacy rate	69.9 percent
Adult HIV prevalence	7 percent (MoH, 2005)
No of radio sets (per 1000pple)	130 (UNICEF, 2002)
No of television sets (per 1000pple)	16 (UNICEF, 2002)
Prevalence of poverty	38 percent (MoFPED, 2004)
Available HEP capacity	315mw (April 2005- ERA); reduced to 200mw at of 2005 and to a crisis 170mw in January 2006
Population / population density	27 million / 126 persons per Km^2 (MoFPED, 2005)
Population growth / fertility rate	3.4 percent PA / 6.8 children per woman
ECONOMICS & TRADE	
Main exports	Coffee, Fish and fish products, tea, tobacco, cotton, maize (corn), beans (MoFPED)
Monetary unit	Uganda shilling

Exchange rate	US$1=sh1,800; º1=2,200; £1=3,200
GDP per Capita	US$240 (MoFPED, 2005)
Integration, trade arrangement	Member of EAC, COMESA, WTO, OIC, ESA, IGAD
Major taxes	Income tax (including corporate tax), withholding tax and rental income tax; value added tax (VAT); excise duty on certain products and sales tax. Imported goods attract import duty and import commission. *(Source: MoFPED)*
Total External debt stock	US$4.3bn [10 percent GDP] (2003/04 – MoFPED)
Inflation	7.0 percent (March 2004 – MoFPED)
Tax revenue	12 percent of GDP (MoFPED)

However, in Uganda, the need for such intervention has been met with considerable debate, and in some respect, resistance. This is part of broader debate about the desirable balance to be kept between regulation and deregulation under the framework of economic liberalisation. In many countries, competition policy and law expressly incorporates economic and social policies that are different from, if not antithetical to, the protection of competition.

In this respect, stakeholders have spoken at length about policies that include: promotion of economic efficiency; promotion of production or distribution of goods/or technical or economic progress; protection of consumers; promotion or strengthening of exports; protection of economic freedom; and protection of the 'public interest'.

Against this backdrop, the need for stakeholder awareness, advocacy, and consensus building cannot be overstated. This is underscored by developments like the twin processes of developing competition laws within the EAC and COMESA. This is buttressed by similar developments at the local level, involving the drafting of a law to regulate competition.

This Country Research Report on the competition scenario in Uganda is in respect of a two-year study 'Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa' codenamed 7Up3.

As part of the study, a survey was carried out in Uganda and the findings are detailed in later chapters of this report. It is envisaged that the above and other activities to follow should go a long way in enabling the realisation of the project that aims: to develop the capacity of national stakeholders, including the policy makers, regulators, CSOs, academicians and the media in each of the project countries, through a participatory process, in understanding and addressing prevailing competition concerns from the national, regional and international perspectives, and enabling them to play their respective and expected roles.

Social and Economic Policies Affecting Competition

Development policy: Poverty Eradication Action Plan (PEAP)

Poverty Eradication Action Plan (PEAP) is also the country's Poverty Reduction Strategy Paper (PRSP) that provides an over-arching framework in guiding public action to eradicate poverty. It has been prepared through a consultative process involving central and local Government, Parliament, donors and civil society. Under the plan, Government should ensure the provision of public goods to support both agriculture and industry. In order to reverse the recent marked increase in inequality, Government aims to increase the ability of the poorer households to participate in economic growth through self-employment in and outside agriculture and wage employment. The PEAP provides the foundation for a vibrant and competitive economy with forward and backward linkages amongst the component sectors.

Following are the four core challenges for the PEAP, including:

- The restoration of security, dealing with the consequences of conflict and improving regional equity;
- Restoring sustainable growth in the incomes of the poor;
- Human development; and
- Using public resources transparently and efficiently to eradicate poverty.

The PEAP is grounded on five 'pillars' or components: Economic management; Production, competitiveness and incomes; Security, conflict-resolution and

disaster-management; Governance and Human development. Considered together, the five pillars provide a framework for improved distribution of resources, engagement in economic production and improved welfare of citizens (consumers) *albeit* laced with elements of competition.

However, the first and second pillars i.e., economic management and improved production, competitiveness and incomes have direct inference and reference to market competition. In theory and practice, the authorities have ensured the adherence to the pillars through liberalisation of the country's economy, regardless of the prevailing shortcomings, deficiencies and consequences.

Also, government has formulated and implemented the Medium Term Competitive Strategy (MCTC), conceived as a means to remove obstacles to businesses, in a bid to deepen liberalisation and competition in the marketplace. The MCTC is an offshoot of the PEAP, as it is the over-arching framework for formulation of public policy. And unlike PEAP, it is relatively easier to track implementation of the MCTC, particularly in the short run as budgetary allocations are normally set aside for the purpose. Preliminary reports indicate some success in implementation of the MCTC, although there remains a long way before most of the major obstacles (that also include legal and policy reforms), could be in place.

Industrial Policy

The country's industrial sector is still small but growing steadily and is now completely dominated by the private sector – both local and foreign. The sector is dominated by processing industries using agricultural produce e.g. Coffee, textiles, sugar, beer, leather and tobacco among the major ones.

The sector is steadily transforming from import-substitution to an integral part of the economy with forward and backward linkages aimed at contributing to the country's pursuit for improved production, competitiveness of its products and improvement of incomes for poverty eradication. However, a comprehensive policy on industry is not yet in place except some scattered provisions.

Nevertheless, considered together, the scattered provisions provide for a competitive environment with hardly any impediments, save for provisions over the environment and land rights as provided for in environment and land laws. Licensing requirements in place do not constitute barriers to competition but rather are part of regulatory requirements aimed at consumer protection, technical regulation, generally, to ensure adherence to relevant laws, rules and regulations.

With deep privatisation that started in the '1990s, there are hardly any national champions left. Even with the few that have been in existence, protection has been in the form of short-term fiscal rather than direct legal instruments or provisions in relevant policies or laws.

Trade policy

Uganda does not have a modern, comprehensive trade policy but a series of scattered provisions in place taken from other policies. Considered together, these scattered provisions seek to facilitate the full and effective integration of Uganda into regional and global markets, including the economic and social transformation of Uganda into a competitive, flexible and outward-oriented economy for the benefit of all Ugandans. The policy is anchored on the principles of liberalisation aided with strong elements of competition set on an outward looking framework.

Uganda extends tariff preferences only to countries in the COMESA group and to Kenya and Tanzania under the EAC Treaty. Nearly 800 products are covered by these preferences.

Trade Agreements

Largely spurred by globalisation and the need to reactivate regional integration efforts that broke down in the 1970s, Uganda has signed several trade agreements and is playing an active role in multilateral and regional trade negotiations. The country is a member of the following regional and multi-lateral trade agreements:

I. The World Trade Organisation (WTO);
II. The African, Caribbean and Pacific-European Union (ACP-EU) Cotonou Agreement;
III. The New Partnership for Africa's Development (NEPAD).
IV. Common Market for Eastern and Southern Africa (COMESA);
V. The East African Community (EAC); and
VI. Inter-Governmental Authority on Development (IGAD).

In addition to the above, Uganda as a Least Developed Country (LDC), is a beneficiary to a number of market access initiatives. Prominent among these initiatives are:

- The Africa Growth and Opportunity Act (AGOA) of the US; and
- Everything-But-Arms (EBA) initiative of the EU.

The net effect and objective of the country's involvement in the various trade and economic groupings is a drive towards an outward looking economic dispensation in which there is free entry and exit of capital, and where market forces determine demand and supply of goods and services. So far, the country has a *laissez faire* trade policy that guarantees

more than minimal levels of competition in all spheres of trade (the market).

Regulatory Policy

Liberalisation and privatisation in the early 1990s led to restructuring of the economy informed by shifting of the means of production and changing roles of the state. Deregulation was instituted in sectors considered crucial to the economy to check anticompetitive activities and take charge of firms and persons whose actions could be injurious to the economy and to individual consumers. It was also due to the need to put in place a rigorous regulatory regime following withdrawal of government from business.

This would be particularly a danger in areas where one, two or three firms may be operating thereby raising the prospect of price-fixing, attempts to run competition out of the market through hostile takeovers, and creation of virtual monopolies etc. Through bodies like the Uganda Communications Commission (UCC), the law has prescribed safeguards. The framework covers licensing, supervision, regulation and surveillance. The agencies have investigative powers as well as powers to discipline, handle consumer complaints and to arbitrate in disputes involving firms. The bodies enjoy a large measure of operational and financial autonomy, although they are still under the oversight of a Minister responsible to the Cabinet and have ultimately to account to Parliament through the relevant Minister.

In addition, there are intra-sectoral councils and associations like the Pharmaceuticals Council and Association, Law Society and Council, Medical and Dental Practitioners' Council and the Broadcasting Council with powers to set or advise on operational and ethical standards and a code of conduct; powers to investigate member (individuals or companies) and either directly take or recommend disciplinary action. In this respect, this voluntary sector association may act on its own or at the request of or in concert with the sector agency or government.

However, the case of recent action by the Media Council delegating its powers to the Media Centre, including powers to revoke licences of practising journalists, a non-statutory body created by government raises questions of concern over independence of regulatory bodies and their capacity of oversight as well as limitations over industry players. Therefore, while regulatory policy has had significant success in elimination of structural bottlenecks, remnants from the days of the command economy,in ensuring order in the marketplace, shortcomings remain, underlined by several cases (at least as reported in the media) where the authority of regulatory bodies has been undermined or interfered with.

Investment policy

Government created the Uganda Investment Authority (UIA) in 1991 partly to effect emphasis on investment as the engine of growth. The UIA was formed to promote and facilitate investments in Uganda, and advise the Government on policies conducive to investment and provide information on investment issues, among others. One of the core functions of the UIA is attracting FDI into the country, as well as promoting investments by Ugandans.

Following failure to realise its original mission, the UIA's role was later changed to a one-stop centre for prospective investors. Along with the creation of the UIA, Government put in place a law to govern foreign investments – the Investment Code of 1991. However, the Code has been reviewed and the flagship 'carrot', — a package of investment incentives, including tax holidays to investors has since been scrapped. All tax benefits under the new incentives regime have been harmonised so that eligible investors enjoy the benefits directly without need for a certificate of incentives as long as they make investments of a capital nature.

The above development, in a classical view of the prevailing investment policy framework, 'levelled' the ground for investors, local and foreign. Before the scrapping, it had been observed that the country's investment sector had suffered a reversal with foreign investors getting a preference package at the expense of their local counterparts, a practice deemed outright anticompetitive. Although elements of 'anticompetitiveness' (like insistence on sourcing a portion of raw materials locally, regardless of cost as well as limitation of players in certain sectors like telecommunications) still exist, the sector generally remains liberal and competitive.

Government Procurement Policy

The need for transparency has resulted into tightening the regulatory noose around public procurement. It's now governed by a separate policy and law in Uganda and is under the regulatory oversight of an independent body — the Public Procurement and Disposal of Assets Authority (PPDA). Consequently, it has had the double effect (benefit) of helping to improve transparency as well as upping competition as new rules explicitly call for 'competitive bidding' for services / goods whose value exceeds US$5,000. This has dealt a blow to the tendencies by departments and public servants that use arbitrary powers, many times unfairly or corruptly, to procure goods and services ostensibly in public interest.

Before the above reforms, public procurement was largely a den of corruption with public servants taking bribes before awarding contracts or outrightly awarding contracts to firms in which they had visible interests. Well, as such cases have not completely been

uprooted, there is a marked decrease of corruption in public procurement, at least according to perceptions and anecdotal evidence. What remains to be done is to improve the regulatory capacity of the authority, especially its investigative capacity in a bid to identify and counter anticompetitive practices like bid rigging that are 'white collar' in nature and therefore hard to deal with under the *status quo.*

Labour Policy

In principle, labour policy is liberal and conducive; allowing free movement of labour Rights of workers have to be protected as enshrined in various international laws, treaties and regulations to which Uganda is a signatory.

However, until recently, the main drawback was failure to enact modern labour laws and review of existing ones, a shortcoming blamed for prevalence of abuse of workers by unethical employers. Several media reports have also pointed towards the existence of sweatshops (work places where workers' rights are abused and/or, are exploited) in the country at the hands of mainly foreign investors.

The labour sector received a big shot in the arm with revitalisation of the labour movement from the 1990s at a time when the Government was carrying out restructuring of the economy legal/policy reforms. Complementary efforts from private sector bodies like the Federation of Uganda Employers (FUE) have channelled consequential synergies into a push for broader ownership of the policy and law reform process.

Also, the long awaited modern labour framework was enacted in March 2006, aimed at addressing contemporary issues in the increasingly dynamic marketplace. In this respect the laws included-the Employment Bill 2005 (consolidating and revising the law relating to employment) and the Occupational Safety and Health Bill 2005 (reforming the law relating to safety at workplace) Others include the Labour Disputes Bill 2005 (to address arbitration and disputes settlement) and the Labour Unions Bill 2005 (to provide for issues pertaining to workers' rights and the need to consolidate interests.

Even with the laws being in place, local businesses is sometimes seen by sections of their foreign counterparts as employing 'cost cutting' measures that violate labour rights, for instance, payment of comparatively low wages, longer hours of work, and denial or exclusion of benefits like insurance, etc. Such measures help local companies save on their cost of production, which foreign companies claim give local companies upper hand with regards price competition in similar products. Foreign companies assert that such practices constitute elements of unethical behaviour that hinders competition.

It is envisaged that when fully implemented, the new framework should make the country's labour policy sufficiently flexible so as to encourage investments because labour-related issues would not constitute an impediment to free entry and exit from markets.

SMEs Policy

Importance is being attached to Small and Medium Enterprises (SMEs) although there is lack of a comprehensive policy to address the enterprises holistically.

SMEs provide for about 12 percent of employment in rural areas and 40 percent in urban areas. Government plans to develop a cost effective way of delivering services to them, particularly in business development skills and has indicated that it intends to review the method of taxation used for this sub-sector. As a gain, bureaucratic obstacles to their operations are expected to be reduced by the systematic and consultative scrutiny of proposed new regulations and review of existing ones. In practice, SMEs in Uganda have been faced with several obstacles e.g. access to credit, poor infrastructure, inaccessibility to utilities etc., that have rendered them uncompetitive, contrary to expectations that they enjoyed privileges – essentially on paper – that protected them against external threats.

However, the long-term interests and concerns of SMEs can only be addressed under a relevant policy and institutional framework established through a participatory approach in which industry players are involved. Well, as the prevailing dispensation is wrought with relative disorganisation, the overall environment guarantees competition in the marketplace but falls short of precepts required to regulate conduct with a view to checking malpractices. Affairs of SMEs are not governed by a comprehensive policy and institutional framework; there is sufficient competition by default, owing to the nature of the environment (many players due to liberal entry and exit 'rules'). However, this *leissez faire* dispensation falls short of guaranteeing consumer protection and economic efficiency like what would be expected from a situation where competition is regulated.

Consumer Policy

Certain provisions on consumer protection and welfare exist in sectoral policies e.g. water, telecommunications, electricity, etc. However, a comprehensive consumer protection policy is not in place yet, although a draft to the effect is expected to be originated by the Cabinet at the same time when it would be considering the draft proposed Consumer Protection Bill.

The absence of consumer protection policy and supportive legislation in the country means that

consumer perspectives are seldom taken into account in the formulation of public policy. In case they are considered, it is haphazardly done. Therefore, enactment of policy to this effect will go a long way in refocusing the attention of authorities and stakeholders on the market practices that may be detrimental to the interests of both consumers and businesses alike.

However, on the whole, the strength of the country's scattered consumer policy is a reality that it is anchored on principles of liberalisation and free-market approaches that guarantee more than minimum competition in the marketplace.

Market and Competition

Overview

The market economy is still in its infancy, characterised by absence of enabling laws/institutions in some sectors (and industries) or the existence of inadequate and/or archaic policies and laws e.g. sale of goods, consumer protection, food safety, Intellectual property etc. The emergence of competition in the marketplace has largely been as a result of Government direct involvement in attraction of investments or enhancement of capacity for provision of goods and services where none existed or where their existence was inadequate.

Consequently, except in retail trade, the level of competition locally is relatively low given the infant nature of the country's industrial and service sectors. In other areas of the services sector, there exists relative competition, although high market concentration remains a barrier to the attainment of desirable levels of competition in the marketplace. In areas involving huge capital investments, a *de facto* oligopolistic setup has emerged. This includes the utilities sector.

There is market concentration in several sectors of the economy, particularly in financial services (insurance), manufacturing (mainly food processing) and beverages, among others. Under this set up, dominant entities normally set the pace in form of *de facto* leadership on all fundamental aspects of their respective sectors thereby hurting competition.

A monopolistic competitive dispensation prevails in several sectors. The effect of all this is that there are many cases of anticompetitive behaviour in the marketplace that is/or, could be deleterious to both market competition (and related consequences) as well as consumer welfare.

Alongside this, involvement of the state in business still exists to some extent, for example, in telecom, power, milk processing, etc. Also, policy options that hurt competition like ill-enforced public procurement and selective and inequitable provision of subsidies to some businesses and industry e.g. BHS Limited, GBK Limited and generally, urban formal businesses as opposed to rural and small scale businesses provide cases to examine and enforce competition in the country.

However, multinationals are making in-roads into the major production sectors of the economy as well as provision of basic services. With the opening up of borders under the EAC Customs Union, COMESA and the WTO, the need for competition regulation has never been timelier.

Institutional Framework

Uganda's economy until very recently has been highly regulated. When competition[68] was not deliberately and negatively interfered with, it was 'encouraged rather haphazardly. Competition was dealt with usually in the context of other legislations and not directly. Therefore, one can hardly speak of an institutional framework[69], rather of a series of sectoral arrangements. In addition, and perhaps to be fair to the authorities of the day, the majority of firms in Uganda are small family controlled entities, making the need for an enforceable competition regime hard to implement.

Due to the nature of the country's economy, such phenomena as mergers, takeovers, monopolies and price cartels were either rare or when they did occur, their possible harmful effects were not considered to be serious by the authorities. Following the deregulation of recent years, the government has, mostly by default, taken the sectoral approach but curiously only for those sectors where control[70] by Government or its agents are still considered of paramount importance. This led to formation of authorities and commissions, like the National Drug Authority (NDA), UCC and Uganda Insurance

68 Competition may be defined as an effort by two or more parties to ensure the custom of a third party by offering the most favourable terms. A competitive market is one in which a large number of sellers and buyers vie or compete for identical products or commodities, deal with each other freely, and retain the right of entry into and of exit from the market.

69 Under an ongoing law review process in Uganda, an institutional framework has been mooted that would cover business-related laws including competition law in a more comprehensive manner. The Ministry of Tourism, Trade and Industry (MTTI) has drafted a competition law was scheduled to be tabled before Parliament in 2005. However, the term of the 7th Parliament ended before this and other related laws (commercial) could be debated. The draft has since been sent back to the Ministry responsible for trade for onward transmission (back to Parliament) via cabinet.

70 Sectors like arms manufacturing and importation, trade in drugs and the utilities sectors are still considered a responsibility of the state and therefore should not be left entirely to the private sector. Semi-autonomous publicly funded bodies oversee these sectors.

Commission (UIC) among other sectoral regulatory agencies.

Competition Regulation

As far as can be established, there is currently no law or set of laws in Uganda that address the exclusive subject of competition in business. Private monopolies are not normally subjected to any restrictions or control, but in certain sectors such as finance (insurance) there are certain rules at least on mergers and similar phenomena. In general, it would be safe to say that any regulations to prohibit or sanction restrictive practices and enhance competition are largely part of other legislations.

In Uganda, many basic services like water and electricity are still only available largely from public enterprises with total monopoly positions Although power generation and distribution was recently privatised but earlier liberalised, the existing enterprises enjoy monopolistic positions in the marketplace. These enterprises are allowed to set their prices subject only to regulatory authority approval.

The majority and by far the most important firms in Uganda are registered under the Companies Act, a complex piece of legislation first introduced during the colonial era and which does not concern itself with competition in any direct way.

Competition Law

Competition Law: Evolution, Foundation, Legislative History, and Philosophy

Uganda neither has a law nor a policy on competition regulation. However, drafts are in place and could be tabled in Parliament for enactment soon. The draft law, to be known as the Competition Act, seeks to create, encourage and protect competition, encourage investments, strengthen the efficiency of production and distribution of goods and services and protect and promote social welfare of consumers in Uganda.

Architects of competition law through the existing consultative process were at first attuned to pursuing static and dynamic economic efficiency, which are the principal reasons for introducing competition. However, developments in the COMESA region (following enactment of a regional policy and law on competition), later the EAC as well as from civil society (particularly consumer organisations) led to consideration of consumer welfare in the consultative process.

Market failures to deal with 'excesses' occasioned by the inbuilt safeguards and assumptions led to the conviction that competition regulation could produce significant benefits, and motivation to, in as many sectors as possible. Authorities and lay stakeholders alike, were not familiar with what constitutes a competitive market and what threatens it and were resigned to reliance on structural remedies which would probably prove to be a better instrument for developing competition than dependence on a set of behavioural prescriptions.

Government's unwritten policy was to wind down both access and economic regulations as and when competition becomes sufficiently strong. The point of departure at which formal and broader (comprehensive) regulation should come, as instituted elsewhere has been to consider the fraction of resources devoted to such regulation of a specific sector. Sectoral regulatory bodies were largely instituted to perform their traditional 'policing' roles in a bid to persuade the private sector, i.e. prospective investors, that the Government was committed to making the transition.

It was envisaged that competition agencies (authorities) have important expertise in identifying and helping to eradicate market power, which if left unchecked, would greatly reduce the benefits of regulatory reform. This is especially necessary because firms that are used to operating as monopolies or being coordinated by regulators may find it 'normal' and highly attractive to continue in their pre-regulatory reform modes of doing business. Uganda was especially a ripe case in the aftermath of the massive privatisation process that saw the divestiture of tens of formerly state-owned enterprises, some with immense powers in the marketplace and therefore a threat to smaller competitors as well as consumer welfare.

In practice, regulatory reform has rarely consisted simply of abolishing regulations and leaving everything up to market forces operating within general framework competition law. In a great number of situations, the thinking entailed policy makers adopting the view that competition must be fostered by a new kind of regulation, which may or may not be strictly transitory. Some new or existing sector-specific regulators were being mandated to promote competition and sometimes being charged with formulating and/or applying sector-specific competition rules.

What has been in contention is the optimal level of involvement; competition agencies elsewhere have been assigned tasks that had previously been performed by Government departments or by sector-specific or general regulators. In practice, there are few, if any, countries where that division can be regarded as finally settled, especially since the transition to greater competition is far from complete. Debate on this and other substantive issues, i.e. competition with regard to policy and law is expected to continue in Cabinet and in Parliament. With the

deferral to debate the draft law, it is expected that there could be some more stakeholder consultations before it is re-submitted to Cabinet before going to Parliament. But a timetable for the same is not clear. Nevertheless, the draft had been considerably well discussed by stakeholders while still under the aegis of the Uganda Law Reform Commission (ULRC). Given the procedure of Parliamentary debate, still, more stakeholders would be requested to make their submissions when the law is at 'committee stage'. Therefore, stakeholders who may still wish to make their submissions would be availed an opportunity to do so then.

Objectives, Scope and Coverage of Competition Policy/Law

It is appreciated locally that introducing competition in sectors previously dominated by state owned or heavily regulated vertically integrated firms and protecting consumers from supra-competitive pricing are difficult tasks that require a very broad range of expertise and experience.

In addition to dealing with structural, stranded cost and universal service issues, there are four tasks typically needing careful attention during and after the transition from Government ownership or heavy regulation to much greater reliance on market forces. The fifth area, embraced by an increasing number of countries, is consumer protection. The five tasks are:

1. Competition protection – controlling anticompetitive conduct and mergers;
2. Access regulation – ensuring non-discriminatory access to necessary inputs, especially network infrastructures;
3. Economic regulation – adopting cost-based measures to control monopoly pricing; and
4. Technical regulation – setting and monitoring standards so as to assure compatibility and to address privacy, safety, and environmental protection concerns' and
5. Consumer Protection – though partly the focus in technical regulation, stakeholders are of the view that consumer protection requires special focus. It involves setting and monitoring standards and benchmarks against which consumers would be protected against economic and safety fallout from unconscionable conduct of competing businesses.

Against that background, the Ugandan law, to be referred to as the Competition Act, is aimed at fostering and sustaining competition in the Ugandan market so as to protect consumer interests while safeguarding the freedom of economic action of various market participants and preventing practices which limit access to markets or otherwise unduly restrain competition, affecting domestic or international trade or economic development and establishing regulatory body, the UCC.

The jurisdiction, power and authority of the proposed commission shall be exercised through benches, whose members shall be appointed by the Chairperson of the Commission. Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of the Civil Procedure Act and the Commission shall be deemed to be a civil court for the purposes of that Act.

Any person aggrieved by an order of the Commission from which an appeal is allowed by this Act but no appeal has been preferred, may within 30 days after the date of the order, apply to the bench which made the order for a review of the order and the bench may make such order on the application as it thinks fit. The law provides for establishment of a principle bench, on which the chairperson sits, as well as subsidiary benches. Each bench shall have a judicial officer appointed as member.

Dealing with Horizontal Restraints

Part VI of the draft law on the broad area of 'Prohibition of certain agreements' deals with the exclusive subject of vertical and horizontal restraints, specifically referred to in Section 43 of the draft law as anticompetitive agreements. Sub-section (1) of the specified section states: "An enterprise or association of enterprises shall not enter into any agreement or take any decision or engage in any concerted action, in respect of production, supply, distribution, acquisition or control of goods, or the provision of services, which causes or is likely to cause an appreciable adverse effect on competition". Sub-section (2) further stating: "An agreement reached or decision taken or concerted action engaged in, in contravention of sub-section (1) is void".

Sub-section (3) deals exclusively with horizontal restraints thus: "An agreement entered into between enterprises or a decision taken by an association of enterprises, including cartels, or concerted practices between enterprises, involved in the same or similar manufacturing or trading of goods or provision of services, which:

- directly or indirectly fixes purchase or selling prices;
- limits or controls production, supply, markets, technical development or investment;
- shares markets or sources of production supply by territory, type, size of customer or in any other way;
- directly or indirectly results in bid rigging or collusive tendering, is presumed to have an adverse effect on competition".

Dealing with Vertical Restraints

Sub-section (4) of section 43 of the draft law deals exclusively with vertical restraints thus: "An agreement or concerted practice between enterprises at different stages or levels of the production chain in different markets, in respect of production, distribution, sale or price of or trade in goods or

provision of services including: tie – in arrangement; exclusive supply agreement; exclusive distribution agreement; refusal to deal; resale price maintenance, is an agreement or practice in contravention of sub-section (1) if the agreement or concerted practice causes or is likely to cause an appreciable adverse effect on competition".

However, the law includes more provisions to guide determination of restraints as defined in sub-section (4). This is for purposes of determining whether there is an adverse effect on competition. The draft law lists a number of factors that may be taken into account by the Commission. The Commission is expected to consider whether the agreements or concerted practices:

- result in creation of barriers to new entry or;
- result in forcing existing competitors out of the market or;
- result in foreclosing competition by hindering entry into a market;
- result in any consumer benefit or pro-competitive impact; and
- contribute to the improvement of production and distribution and promote technical and economic progress, while allowing consumers a fair share of the benefits.

Nevertheless, Part VI of the draft law does not apply to any agreement, decision or concerted action leading to any combination (mergers and acquisitions), even if no notice is required to be given to the Commission under Section 45 that focuses on combinations or M&As.

Also, provisions do not restrict the right of any person to restrain any infringement of IPRs granted in Uganda or to impose such reasonable conditions as may be necessary for the purposes of protecting or exploiting such IPRs.

The provisions of the law in Part VI do not restrict the right of any person to export goods from Uganda, to the extent to which the agreement, decision or concerted action relates exclusively to the production, supply, distribution or control of goods or provision of services for the export.

Dealing with Dominant Market Position

Part VII of the proposed draft law covers the broad area of "Prohibition against abuse of dominant position". Section 44, sub-section (1) of the draft law prohibits enterprises from abusing their dominant positions.

In the proposed law, dominant position is defined to mean a position in the market which materially restrains or reduces competition in the market for a significant period of time; and where shares by that person or enterprise of the relevant market exceeds 35 percent.

According to draft law, for the purposes of determining whether an enterprise enjoys a dominant position, or otherwise, one or more of the following factors may be taken into account:

- market share of over 33 percent;
- size and resources of the enterprise;
- size and importance of the competitors;
- economic power of the enterprise including commercial advantages over competitors, which may be measured by reference, among other factors, to product range, established trade marks, customer loyalty, vertical integration of the firm, sales or service network;
- technical advantages enjoyed by the firm, which may be judged with reference, among other factors, to patents, know-how and copyright;
- dependence of consumers;
- monopoly status or dominance acquired as a result of any Act, or by virtue of being an undertaking of the Government, Government company or a public sector undertaking;
- entry barriers if any, which may be judged by reference, among other factors, to regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high switching costs for customers;
- countervailing buying power;
- market structure and size of market; and
- any other factor which the Commission considers relevant.

The proposed law states that abuse of a dominant position having an adverse effect on competition, competitors or consumers occurs when an enterprise:

- directly or indirectly imposes unfair or discriminatory purchase or selling prices or conditions, including predatory prices;
- limits production, markets or technical development to the prejudice of consumers;
- indulges in actions resulting in denial of market access;
- makes the conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of those contracts; and
- uses dominance in one market to move into or protect another markets.

Dealing with Mergers and Acquisitions (M&As)

Part VIII of the draft law covers regulation of "combinations" or M&As. Like competition law in other jurisdictions, the Ugandan draft law provides that it is an obligation to give notice of combinations in certain cases.

The law provides that "Any person who proposes to enter into an agreement or combination …shall give

notice to the Commission in the prescribed form, specifying the details of the proposed agreement or combination, within seven days after the occurrence of any of the following events:

- the Board of Directors of respective companies accepting a proposal of merger or amalgamation;
- the conclusion of negotiations of an agreement for acquisition or acquiring of control; and
- the execution of a joint venture agreement, shareholder agreement or technology agreement, in relation to any joint venture".

Only the Commission (competition authority / agency) has powers to grant an exemption from filing the notice required under the law. This should be in respect of an acquisition by a public financial institution, foreign institutional investor, bank or venture capital fund under any covenant of a loan, share subscription or investment agreement or financing faulty. The enterprise concerned should apply for exemption in the prescribed form, specifying the extent and terms of control, the circumstances for exercise of such control, the consequences of default and control of the enterprise.

However, a public financial institution, foreign institutional investor, bank or venture capital fund is not exempted from filing a notice under the law, in relation to any inter-related or controlled enterprise at the time of acquisition or establishing a combination.

Powers to Investigate into Acquisitions, Mergers and Joint Ventures

The draft law gives the competition authority powers to enquire into every combination referred to for satisfying itself that the combination does not cause or is not likely to cause any adverse effect on competition within the relevant market in Uganda.

The laws empowers the authority to carryout enquiries into any acquisitions where the parties to the proposed combination namely, the acquirer and the company whose shares, voting rights or assets are being acquired, jointly would have assets worldwide, exceeding five hundred currency points, i.e. Ugandan Shilling UGX10,000,000 (US$5,600) or turnover worldwide, exceeding one thousand five hundred currency points, i.e. UGX30,000,000 (US$16,800).

Alternatively, the group to which the entity in which the shares, assets or voting rights, as the case may be, would have been acquired will belong, would have assets in Uganda in excess of two thousand currency points, i.e. UGX40,000,000 (US$22,400) or a turnover exceeding six thousand currency points, i.e. UGX120,000,000 (US$67,200); or worldwide, assets in excess of one billion US$ or a turnover in excess of half a billion US$. In our view, unless otherwise construed, the above would constitute thresholds that the CRR advisor could have referred to in his comments. However, as regards to their possible effects on the business community or the planned regulatory body, we cannot ascertain that for now. Nevertheless, this could be subject to further debate in the meantime while awaiting the tabling of the draft law before Parliament.

Also to be overseen, is a combination involving control by a person over an enterprise where that person has already direct or indirect control over another enterprise engaged in production, distribution or trading of the same or substitutable goods or provision of the same or substitutable service.

Dealing with Cross-Boarder Abuses

The law provides for regulation of acts taking place outside Uganda but having an effect on competition in Uganda. The competition regulatory authority, the UCC is given powers under the draft law to regulate cross boarder acts.

Where any practice of an enterprise, as provided for under the law, is carried on outside Uganda, but has and is likely to have an appreciable adverse effect on competition in Uganda, the Commission has jurisdiction to make such orders as may be necessary to combat the effect of the practice.

Also, the Commission is given powers to vet combinations (M&As), including in situations when one of the parties is from outside the territory of Uganda. The powers are conferred to the Commission to carryout enquiries with a view to satisfying itself whether that combination causes or is likely to cause an appreciable adverse effect on competition within the relevant market in Uganda.

Extra-Territorial Jurisdiction and Its Effectiveness

Extra-territorial jurisdiction of would only be effective when considered under the broader bilateral or regional cooperation arrangement of agreement with counterpart agencies in neighbouring territories.

Because Uganda does not have a functional competition framework, the effectiveness of the envisaged arrangement cannot be ascertained at this stage.

Checks and Balances

In Uganda, regulatory reform as well as process of establishment of a framework on competition regulation, has induced important debates about the degree to which sectors being opened up to greater competition should also be subject to general competition laws enforced by the same competition agency responsible for protecting competition in other sectors of the economy.

In practice, regulatory reform has rarely consisted simply of abolishing regulations and leaving everything up to market forces that would later be operating within general framework competition law. It is expected, like in a number of situations elsewhere, policymakers would adopt the view that competition must be fostered by a new kind of regulation which may or may not be intended to be strictly transitory.

There are some examples of new regulators being given mandates to promote competition and even being charged with formulating the competition rules. The *status quo*, with regard to division of labour, is that regulatory agencies by default are supposed to ensure that competition takes place in the sectors under their respective jurisdiction. However, the draft law gives the competition agency the ultimate authority with regard to competition regulation. The law provides that: "where in the course of a proceeding before any statutory authority entrusted with the responsibility of regulating any utility or service, an issue is raised by any party that any decision that the statutory authority has taken or proposes to take, is or would be, as the case may be, contrary to the provisions of this Act, then the statutory authority shall make a reference to the Commission".

Other Characteristics: Exclusion of Jurisdiction of Civil Courts

The law provides that no civil court would have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission is empowered by or under the proposed law to determine and no injunction would be granted by any court or any authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this law. However, the Constitution of Uganda provides that the High Court has jurisdiction in all matters. In light of this, therefore, the proposed law would have to be revisited. The would-be conflict of the law and the constitutional provision should be addressed during debate in Parliament and it is expected that it would be taken care of, as several stakeholders have already raised it.

Competition Advocacy

Mechanisms on competition advocacy/adversely have been built in the proposed law. Particularly, in formulating a law or policy, the Minister responsible for trade or whose docket the proposed changes fall, may make a reference to the Commission for its opinion on possible effect of such law or policy on competition and on receipt of such a reference, the Commission is mandated to, within sixty days, give its opinion to the Minister.

Establishment of Competition Fund

The law provides that the Minister responsible for trade should establish a fund to be called the Competition Fund. The Fund, among other sources, would be credited with fees received from any person for filing a complaint or any application under this Act; the money received as costs, if so directed by the Commission, from parties to proceedings before the Commission; grants and donations given to the Fund by the Government, companies or any other institutions for the purposes of the Fund; the interest accrued on the money paid to the fund; and the interest or other income received out of the investments made from the Fund.

The Fund would be utilised for the promoting competition advocacy, creating awareness about competition issues, and training, in accordance with such rules as may be prescribed.

The Fund would be administered by a committee of members of the Commission as would be determined by the Chairperson.

Sectoral Approaches

In Uganda, the deregulation policy was instituted as part of other measures considered crucial to the economy as a means of checking anticompetitive activities and actions of unethical firms and persons that could be injurious to the economy (and to small extent individual consumers). It was also due to the need to put in place a rigorous regulatory regime following the withdrawal of Government from business.

It was envisaged that possible unrest could emerge in areas where one or more firms may be operating, raising the prospect of price-fixing, attempting to run competition out of the market through hostile takeovers, and creating virtual monopolies etc. Through agencies like the UCC the regulatory body in the communications sector, Government has prescribed safeguards. The framework covers licensing, supervision, regulation and surveillance. The agencies have investigative powers as well as powers to discipline, handle consumer complaints and to arbitrate in disputes involving firms. The agencies enjoy a large measure of operational and financial autonomy, although they are still under the oversight of a Minister responsible to Cabinet and have ultimately to account to Parliament through the relevant Minister.

In addition, there are intra-sectoral councils and associations like the Pharmaceuticals Council and Association, Law Society and Council, Medical and Dental Practitioners' Council and the Broadcasting Council with powers to set or advise on operational and ethical standards and a code of conduct; powers to investigate member (individuals or companies) and either directly take or recommend disciplinary action. In this respect, this voluntary sector association may act on its own or at the request of or in concert with the sector agency or Government.

Nevertheless, while competition regulation has been instituted in some sectors that have recently been restructured, anticompetitive practices (ACPs) or unfair trade practices are not broadly defined under the established frameworks and therefore are not *per se* illegal. Nevertheless, a fair level of competition has been encouraged which could act as a foundation for establishing a culture of competition that could require considerably less effort to enforce.

Power

Before enactment of the Electricity Act 1999, the Uganda Electricity Board (UEB) a Corporation established as a body corporate by the Uganda Electricity Act, Cap 135 was in charge of generation, transmission, distribution and supply of electricity. The UEB would in addition make and recover charges for electricity, construct, evict and maintain power lines, acquire land and set tariffs for electricity.

This scenario was changed with the enactment of the Electricity Act, 1999. The Act established the Electricity Regulatory Authority (ERA) whose main functions are to issue licences for generation, transmission, distribution, sale of electricity and consumer complaints handling. The ERA also ensures that companies issued with licences do abide by the conditions of their licences, which may be revoked in case of continued non-compliance.

Under section 126 of the Act, the Minister is empowered to form successor companies to assume all the duties and functions of the UEB, which would eventually be dissolved.

Consequently, three companies have been formed to take over the functions of UEB, including: Uganda Electricity Generation Company Ltd; Uganda Electricity Transmission Company Ltd; and Uganda Electricity Distribution Company Ltd. According to the new power policy, power generation and distribution are to be open to competition but transmission would be the preserve of the state.

Accordingly, functions of the UEDCL have been concessioned to Umeme Limited, a consortium made up of South Africa-based powerhouse Eskom and Globeleq, a subsidiary of the Commonwealth Development Corporation (CDC). UEGCL has gone to Eskom while UETCL remains in the hands of Government. Umeme Limited and Eskom, in theory, are open to competition, as new players have been licensed to start business. However, the newly licenced entities are very small in nature that they cannot be construed to pose any threat to Umeme and Eskom. It is envisaged that this would eventually create competition, which may result into better services for the consumers.

Generation – The main power (hydro-electric power) generation facilities in the country are in the hands of the private sector. The two power generation facilities; Kiira and Nalubaale Power Stations are currently being run under a 20-year concession to South Africa-based Eskom. However, the Government under UEB is running thermal generation plants in Northern Uganda. A new 50mw thermal power plant has been established in Kampala (Lugogo), under a special lease arrangement between Government and Aggreko International Power Company.

West Nile power Limited, another small power plant currently serving the major towns of Arua and Nebbi is another player that emerged most recently. Smaller hydroelectric power generation plants exist at Kilembe Mines (Kasese), Maziba (Kabaale) and Uganda Cobalt Company (Kasese).

Transmission – The function as well as the power transmission entity are in the hand of the state and are to remain that way unless the law is changed. According to the Electricity Act 1999, the national power grid (high voltage) and the entire function of electricity transmission shall be overseen and undertaken by the state. UETCL undertakes the above functions.

Distribution – Restructuring and privatisation of the country's power sector received new impetus in 2005 when Umeme, a consortium made of Eskom and Globeleq, a subsidiary of the Common Wealth Development Corporation (CDC) took over UEDCL. Umeme emerged as the first private sector company to distribute power in the country.

In spite of the recent developments, the power sector in the country is dominated by South Africa-based power giant Eskom by way of its acquisition of a 20-year concession to run largest power generation plants in the country and its stake in the Umeme Consortium.

Pharmaceuticals

Before 1993, trading in drugs was unduly highly restricted for reasons related to public safety and national security.

In Uganda there is generally no restriction on what one may engage in subject to obtaining the relevant licences, and fulfilling other requirements on health, premises and their location and where availability of the relevant expertise may be a prerequisite, for example to operate a dispensing pharmacy. Even in some of these cases, lax supervision and application of the law could result in unfair competition.

Since the 1960s, the External Trade Act was the central regulating statute for import and export operations. Following the enactment of the National

Drug Authority (NDA) Statute in 1993, the situation has changed. The law, among other things, gives powers to the Minister responsible for health to require that a licence be obtained to export or import certain goods. However, the powers over licensing importers of pharmaceutical products have now been transferred to the autonomous NDA.

The NDA statute lays out the National Drug Policy and contains a provision for the authority to ensure the provision and use of essential and efficacious drugs. The statute covers Government control on the manufacturing, exportation, marketing and use of drugs. The National Drug Policy is supposed to cover both the private and public sector.

Although one of the functions deals with "ensuring that drug needs are met as economically as possible", the law does not have an explicit provision that empowers the drug authority to enforce competition in the marketplace.

According to available data, economic liberalisation in the last 10 years as well as establishment of the NDA have not only helped bridge the demand of pharmaceuticals in the country, they have largely precipitated competition in the sector. Due to the open regime related to licensing and importation of drugs in the country, competition now prevails relative to the 1980s and early 1990s although by default.

For instance, there are concerns that centralised procurement by Government through a state-run company, the National Medical Stores (NMS) continues to lockout many would-be suppliers and may in the process mean consumers are paying higher prices for drugs they would otherwise get at lower prices.

The Government had indicated that the NMS would have been privatised by 2005, a development that could open state procurement of pharmaceutical products to competition and lead to price reduction and, it was anticipated, availability of variety of competing products in the market.

Interface Between Competition and Economic Regulation

Communications

After years of slow growth and inefficient management, Uganda's communications sector experienced a growth spurt in the late 1990s, a period in which the sector was liberalised and opened to competition for the first time. Although in principle the country's economy was liberalised in 1993, the communications sector did not adjust in response until the late 1990s when a new legal and institutional framework was put in place.

Box 8.1: Case Study: Competition Regime under Test

UCC's role as a regulator faced its first test when competitors emerged in the country's mobile telephony service market leading to price wars with the new operators reducing call tariffs significantly in a development that bore the hallmarks of predatory pricing. When the privatised state-run UTL started cellular telephony services in 2001, call rates further dropped. MTN Uganda had started the first downward trend in prices. However, without direct intervention in the setting of prices, the phone tariffs have remained stable since mid 2002. The stability is linked to Government fiscal policy, which involved introduction of taxes on phone call credit (airtime) for mobile phone that took effect in 2001. Consequently, companies were, indirectly through a fiscal policy restrained from making further cuts in phone tariffs.

Internet Services

Price wars also broke out among Internet service providers between 2001 and 2002 leading to the collapse of several Internet cafes in Kampala. However, the matter was resolved by the Association of Internet Cafes that resolved that net-time (per-minute charges) should not be reduced below Ugandan Shilling 25 (US$ 0.013).

In 2002, the UCC waived licence fees to Internet cafes as a way of encouraging proliferation of communication services. However, the waiver had other effects like increasing the number of businesses offering Internet services. The move also removed some financial pressure off Internet cafes, which could have contributed towards stability of prices and dumped the price wars.

The passage of the Communications Act 1997 by Uganda's 6th Parliament set into motion a new era in the country's communications sector with wide-ranging implications to the whole economy. First, the law broke the monopoly of the state-run Uganda Posts and Telecommunications Corporation (UPTC), hitherto the only player in the local communications sector. UPTC was for long the sole telecommunications company, courier service provider in addition to offering money transfer services and banking (savings accounts) services.

Most importantly, the law put in place the UCC, the sector regulatory body. UPTC was split into the Uganda Telecommunications Limited (UTL), Uganda

Posts Limited (UPL) and Post Bank Uganda Limited.

UCC issues licences to prospective operators of all services in the communications sector in line with regulations laid down in the communications Act 1997. The Act also gives the Commission powers to ensure competition prevails in the market.

Several companies have since emerged in the private sector offering services that include: VSAT business services, mobile trunked radio services, cellular services but mostly valued added services like payphones, fax bureau, call boxes, internet cafes, etc.

The courier market has expanded tremendously to include globally renowned companies like: DHL, TNT, FedEx, Yellow Pages and Skynet. Local and regional companies include: Daks Couriers, ACME Cargo Limited, Elma Express Delivery, Trans Africa Air Express Couriers Limited in addition to UPL's EMS Speed Post. As a result of liberalisation, the telecommunications sector has since attracted: South African Mobile Telephone Network (MTN) that holds the second national network operator licence. UTL was privatised in 2000 with a controlling stake (49 percent shares) sold to the UCOM consortium made of Egypt's Orascom, Germany's Detecon and Telecel. CelTel Uganda, the pioneer mobile phone company in the country holds only a mobile telephony licence.

As a result of competition in the marketplace, telephone fixed lines have jumped from 45,000 in 1997 to 71,000 in 2004; mobile phone lines shot up from 3,000 in 1996 to close to 1,100,000 in 2005; call offices increased from 992 in 1997 to over 5000 in 2002 and internet subscriptions from 1,000 in 1996 to over 6,000 in 2000 and 15,000 (2003).

Box 8.2: Case Study: Failure of Privatisation and Liberalisation?

The prevailing drought conditions in the region, unprecedented since independence of Uganda in 1962, have exposed the vulnerabilities in the country's power sector. The water level in Lake Victoria from which the River Nile originates, sank by three metres as on January 2006. The situation has been exacerbated by reliance on hydroelectric power that, as the drought has indicated, is vulnerable to the vagaries of nature. Power generation capacity at Kiira and Nalubale dams combined, formerly at 340mw, has since dropped to 170mw. A 50mw thermal plant located in Kampala has done little to nothing to alleviate the prevailing power shortages.

Secondly, it has been widely observed that power generation was not given sufficient attention by government, resulting in power demand outstripping supply by a significant proportion. It had been expected that at least two power generation plants would be operational in the country shortly after 2004. The first one, Bujagali, is expected to come online after 2010. Consequently, the power sector has become the single sector blamed for undermining production in the country, particularly to the largely infant manufacturing sector.

By January 2006, the whole country came under a painful power-rationing regime that almost brought the manufacturing sector on its knees. It is feared that the on-going power woes could adversely affect the economy of the country, whose growth recently lost some of its previously high progression impetus.

The Government is considering setting up more thermal generation plants, to produce up to 150mw of power, in an attempt to ease the power crisis. However, the interventions are not commercially viable and are not expected to attract bidders with a long-term view in the power sector. The high cost of fuel, in addition to competition from the more efficient hydropower facilities, in the long-term, mean that thermal generation plants cannot survive at all in the power sector without state support.

Also, the search is on for alternative power sources. However, the options are expensive to exploit, making most of them commercially unviable, unless they are subsidised by the state. Solar facilities remain out of reach to most Ugandans, 38 percent of whom live below the poverty line. Also, the high costs of production in the country, including power, make other power sources other than hydro only feasible as a stopgap alternative in the short-run.

All the above developments have come on the heels of phenomenal increments in power tariffs much to the discomfort of most consumers. The ERA has given notice that the cost of power would go up once more during the first quarter of 2006.

Energy (Electricity)

Uganda's electricity grid serves 200,000 households and five percent of the country's 24 million people. Consumption is growing steadily due to the booming construction and manufacturing sectors.

The country's hydro-electricity power sub-sector dates back to the 1950s when the Owen Falls Dam (renamed Nalubaale in 2000) was constructed. A second power station, Kiira was commissioned in 2000. UEGCL owns both power stations.

Box 8.3: Banking: In Spite of Privatisation, Changes Are Slow

The Financial Institutions Statute 1993 was enacted to put into place a new framework to deal with financial institutions extensively, including co-operative societies, credit institutions and building societies. The law was aimed at strengthening and regulation of financial institutions by the central bank as a precursor to opening up the sector to competition and therefore more efficient service delivery.

Enforcement of the new law resulted into the closure of 4 local banks, partly for non-compliance with the capital adequacy requirement stipulated in the law. The law also sought to break the practice of family ownership of banking institutions blamed for mismanagement and closure of at least two of the 4 banks whose operations were halted.

After the bank closures, competition increased in the commercial banking sector leading to improvement in service delivery, slight lowering of interest rates, 'exotic' credit schemes and proliferation of new services like automatic teller machines and electronic money transfer among others.

The situation, in terms of competition has changed following the sale of UCBL to Stanbic. Its obvious that the acquisition of UCBL with its extensive branch network, makes Stanbic the dominant commercial bank in the country. In 2002, Standard Bank International of South Africa bought 80 Percent shares in UCBL thus emerging the dominant entity. UCBL was the largest commercial bank in the country overall.

The development has once again adjusted the market share of the various banks in the commercial banking sub-sector although it's not clear yet, what effects the divestiture would have on competition in the long-run.

The development banking sub-sector is under the monopoly of the state-owned Uganda Development Bank. The bank is slated for privatisation with 30 percent stake offered to a multinational financial investor, 30 percent to strategic investors with the rest going to the general public through the stock exchange. At regional level Uganda is host to the East Africa Development Bank. Merchant banking is completely non-existent in the local banking sector.

Case for Competition in Uganda's Power Sector

Until 1999, the state-owned UEB was in charge of power generation, transmission and distribution. In effect, UEB comprised the entire power sector of the country.

However, following passage of the Electricity Act 1999, UEB was split into three companies: Uganda Electricity Distribution Company Limited (UEDCL); Uganda Electricity Generation Company Limited (UEGCL); and Uganda Electricity Transmission Company (UETCL).

The law also provides for the Electricity Regulatory Authority (ERA), the sector regulatory agency. ERA was established in 2001 when its administration was constituted. Most of its structures have since been put in place.

The resultant effect is that the law put into force a new legal and regulatory framework premised on the need for privatisation and liberalisation of the sector leading to competition (at least for power generation, and to some extent for concessions for distribution) and therefore, with the outcomes of improved service delivery and efficiency.

In line with the new framework, UEGCL was privatised early in 2003 under a 20-year concession to South Africa-based Eskom Africa, one of the leading hydropower utility companies in Africa. UEDCL was privatised in 2005.

Earlier, Government licenced two private companies to develop hydro-electricity power facilities along River Nile. The two companies are the American AES - Nile Independent Power and Norwegian Norpak. However, due to policy bottlenecks and financial difficulties faced by the Norwegian and American companies respectively, construction of the power plants has not taken off. Instead, Government has licenced a new investor to develop a 300mw power generation facility at Bujagali, the location formerly to be developed by the American AES-Nile Independent Power.

In line with the Electricity Act, several companies have applied and been granted power generation licences. The companies have subsequently signed supply agreements with the UETCL. The companies include: the state-owned Kilembe Mines Limited that operates a 2mw power station. Kasese Cobalt Company Limited, a Canadian cobalt mining concern and Kakira Sugar Works Limited. Two other small hydropower power generation companies are in the process of setting up facilities along the Nile in West Nile, to the Northwest of Uganda.

Financial Sector

Uganda's financial sector is increasingly becoming more competitive following the establishment of new legal and institutional frameworks. Banks and

banking services are now regulated under the Financial Institutions Statute 1993, while the insurance industry is under a new framework following enactment of the Insurance Statute 1996. The Financial Institutions Bill that is intended to replace the Financial Institutions Statute is aimed at enhancing prudential regulations governing banks and non-bank financial institutions. Another proposed law, governing micro-credit institutions has been enacted, expected to lend some order to a sub-sector that has grown in breadth and influence over the last 5 years.

However, the country's financial system remains small, in terms of value and the volume of transactions undertaken, and undiversified in terms of the type of transactions that it undertakes. By the end of 2000 there were 16 commercial banks, 8 credit institutions, 2 development banks, 15 insurance companies, 28 insurance brokers, 18 micro-finance institutions and 62 foreign exchange bureaux.

Banking

Commercial banks dominate the financial sector and account for over 90 percent of the assets of the banking system.

Before and after independence, several commercial banks operated in the country, notably from India and the United Kingdom (UK). However, the nationalisation drive of the late 1960s resulted in state acquisition of majority shares in the banks. Apart from the state-owned Uganda Commercial Bank, the state acquired shares in Barclays Bank, Bank of Baroda and Tropical Africa Bank (formerly Libyan Arab Bank).

Despite the liberalisation and divestiture of state stake in commercial banks in the country under the privatisation programme, most local banks are weak with many sticking to retail banking and generally shying away from lending. However, two banks remained dominant: the recently divested former state-owned Uganda Commercial Bank Limited (UCBL) that dominated the so-called indigenous banks and Standard Chartered Bank that tops among the foreign ones. UCBL was recently bought by Standard Bank International (Stanbic) of South Africa

Insurance

Although the local insurance industry was liberalised in 1990 when the state-owned Uganda Insurance Corporation (NIC) was opened to competition for the private sector, the industry is still largely under-developed and therefore does not adequately meet the needs of the market. The insurance industry is licenced, regulated and streamlined by the Uganda Insurance Commission (UIC) in line with the Insurance Statute of 1996.

The industry, valued at Ugandan Shilling 40 billion (US$22mn) in 2002, has limited coverage: most insurance companies are in general insurance and life assurance. Engineering and liability insurance is underdeveloped; the insurance market does not provide aviation, marine hull, agriculture, livestock and crop insurance. Social insurance for instance education and health expenses are totally lacking.

Elusive Competition in Insurance Sector?

By 2001, there were 15 insurance operators categorised: 11 covering non-life insurance only and 4 covering non-life and life insurance. There were 28 licenced insurance brokers categorised as: 4 for non-life insurance only, 19 for non-life and life insurance, 2 for loss assessment, and 3 for insurance surveyors and loss assessors. The industry's expansion is largely stymied by low level of awareness about insurance services, partly caused by relatively high illiteracy rates.

As consequence, competition in the sector remains relatively low or lacking with regard to certain products. According to a 2000 report on the industry, 70 per cent of the insurance market is under the control of four insurance companies and close to 60 percent of insurance brokers' business is under control of one broker.

The Insurance Statute of 1993 sought to strengthen the industry as well as make it more competitive so as to attract new players, particularly foreign investors. The American Insurance Group (AIG) joined the industry, which together with the recently privatised National Insurance Corporation (NIC) control the bulk of the business. It had earlier been envisaged that privatisation of NIC would serve as a major boon that would spur competition in the industry.

However, lack of competition mainly arises from weaknesses on the part of 'indigenous' companies. When the UIC enforced a provision in the law that sets minimum capital requirements, over six local companies were locked out – some had less than UGX10mn (US$5524) as working capital. The law sets UGX500mn (US$2,76,243) for local companies and UGX1bn (US$5,52,486) for foreign ones as minimum working capital.

Regional Integration

COMESA Competition Policy and Law

In a bid to ensure equity and fairness through a predictable and level playing field, COMESA has instituted measures to improve the business environment under which economic operators in the regional economic bloc undertake their work. In addition to elaborating the trade remedies and

safeguards, COMESA has worked towards raising awareness, understanding and appreciation of competition law and policy at national, regional and multilateral levels as member states integrate more deeply regionally and multilaterally.

Accordingly, COMESA prepared and ratified a Regional Policy to deal with anticompetitive behaviour and restrictive business practices. Article 55 of the COMESA treaty provides for a regional policy on competition and was used as a starting point for developing a regional competition policy.

Box 8.4: Anticompetitive Practices in Bus Services Affecting Consumers

To become a bus operator in Uganda, all that is required is a vehicle irrespective of its conditions and age. This will cost on average US$3,000 and a Public Service Vehicle (PSV) licence, which is delivered after a basic visual inspection of the vehicle and without reference to any transport plan or strategy. The current organisation of transport services does not allow efficient use of the vehicle fleet. The transport market is not competitive, and is controlled entirely by one Association, which encourages admission of new members who operate used and non-roadworthy vehicles.

The Directorate of Transport is under-staffed and not equipped to carry out the planning, regulation and monitoring functions.

The Association therefore not only sets fares, but also allocates routes and carries out self-enforcement on their operations, regardless of transport needs and efficiency. The Association encourages the enrolment of new members since payment of membership fees is the sole condition for their admission. Since collecting revenue for local authorities has become its main activity, the Association has diverted from its initial objectives and has been neglecting the interests of its members.

Operating bus services that offers obvious prospects for profitability, attract many unskilled operators / drivers to enter the transport business, which has led to an oversupply of vehicles of high average age (15 years, or more), high queuing time at bus stations (one hour), which in turn leads to low vehicle availability and utilisation and to high vehicle operating costs, thereby affecting lay consumers / users of the service.

(Source – 'Urban transport services in Sub-Saharan Africa: Recommendations for reforms in Uganda', M Benmaamar, 2001)

Also, COMESA has urged member states to enact Competition Laws and to establish competent enforcement authorities. Currently, only four countries (Kenya, Zambia, Zimbabwe, and Tanzania) have a law and an enforcement agency. One country (Malawi) has a law but no enforcement agency. Five countries (Egypt, Mauritius, Namibia, Uganda, and Swaziland) are at different stages of development of national laws.

The objectives of the regional competition law include: dealing with anticompetitive practices of a regional (cross-border) nature; instituting formal co-operation regionally among competition authorities; enhancing inter-agency co-operation, as well as getting more involved as a region in multilateral discussions; and ensuring policy dialogue on competition policy.

The law contains specific provisions on merger control - types of mergers, the need for pre-merger notification, and implications for investment in the regional economy. With regard to consumer protection, the proposed law and policy contains provisions on misleading and deceptive conduct, unconscionable conduct for unsafe goods. Both policy and law are in the process of enforcement.

EAC Competition Policy and Law

Spurred by inadequacies incidental to the practice that national competition authorities do not normally protect competition outside their own jurisdictions, the EAC moved to put in place a regional competition framework, complete with a competition policy and law. When fully enforceable, this would create a framework with powers of checking cross boarder restraints to competition.

EAC competition policy takes precedence over partner states' national competition policies. Within its jurisdiction, the EAC competition policy will take precedence of over other regional policies on competition. The policy deals with cross-border restraints of competition and international dimensions of competition, affecting trade and competition between the EAC and third countries. The law provides for a regional competition authority independent from Partner States' governments as well as from any other EAC organ or institution. However, the decisions of the authority shall be subject to judicial review by the East African Court of Justice. The EAC policy and law contain specific provisions on merger control modelled on the COMESA framework.

Consumer Protection Law

Scattered provisions on consumer protection and welfare exist in sectoral policies (water, telecommunications, electricity, etc). However, a comprehensive consumer protection policy is not in place yet, although a draft to the effect is expected to be originated by Cabinet when it's considering the draft proposed Consumer Protection Bill.

The absence of consumer protection policy and supportive legislation in the country means that consumer perspectives in trade are not taken into account. In case they are considered, it is haphazard done. Therefore, enactment of policy to this effect will go a long way in refocusing the attention of authorities and stakeholders on the market practices that may be injurious to the interests of both consumers and businesses alike.

Elements of consumer policy exist in other policies, particularly in sectors that have been recently restructured with additional regulatory oversight e.g. power, telecommunications, and financial services (insurance).

Envisaged Consumer Protection Policy

The Constitution of Uganda seeks to ensure for its citizens — social, economic and political justice. However, the status quo is to the contrary of that ideal situation envisaged in the supreme law of the land. Consumers face imbalances in economic terms, education/awareness levels and bargaining power.

Currently, neither is there an overall consumer protection policy nor a law to protect consumers in Uganda. A draft proposed bill was produced in 1997 and presented to the ULRC during the review of commercial laws.

With regard to consumer issues, it is envisaged by the local consumer movement that the National Consumer Policy should promote and protect consumer rights for just, equitable and sustainable economic and social development.

The Movement has suggested that, taking into account the needs of and priorities for consumers, the objectives of the National Consumer Policy thus should be to:

- strengthen production and distribution patterns which are responsive to the needs of consumers, and with the goal of promoting sustainable consumption on an equitable basis;
- advocate and promote ethical conduct, transparency, consumer participation and responsiveness in the choice of appropriate technology and environmental responsibility in providing goods, services and technology to consumers at all levels;
- oromote the development of market conditions which provide consumers with appropriate choices at fair prices and right quality, and lesser burden on the environment;
- promote assessment of consumer impact in every area of governance where consumer interests are affected;
- promote participation of consumers in every area of governance
- promote adoption of Citizens' Charters for greater accountability and transparency in governance;
- encourage policies and programmes to enable sustainable production and consumption patterns; and
- promote regional and international cooperation in the field of consumer protection, sustainable consumption and production patterns.

The policy should be designed to:

- empower consumers to have access to the basic needs of life;
- protect consumers from hazards to their life and safety;
- enhance the access of consumers to adequate information to enable them to make informed and environmentally benign choices according to individual as well as societal needs;
- promote consumer education through formal as well as non-formal education systems so as to help consumers in their decision making;
- promote accountability and transparency through adoption of Citizens' Charters;
- provide expeditious and inexpensive system of delivery of justice;
- promote an independent consumer movement in the country by providing assistance to consumer and other relevant groups to form their organisations and giving them the opportunity to present their views in the decision-making process; and
- initiate and implement appropriate mechanisms for exchange of information on measures of consumer protection, nationally, regionally and internationally.

Draft Consumer Law

A major process of law reform has been underway in Uganda since 2000 when the statutory ULRC was formed. The reform is underway in the context of other legal and economic reforms. One of the prominent issues that have arisen since the onset of the law reform process started is consumer protection. Spearheaded by the local consumer movement, the process of enactment of a consumer protection law has been protracted but with apparently low interest on the part of Government.

In addition, there is increasing anxiety in the country regarding the impact of trade liberalisation on

consumer welfare and how it can be addressed to Government for consideration as part of the organisation's bid to ensure that a law to protect consumers was enacted. Contents of the draft have been considered and are included in the Government draft produced by the ULRC. The draft awaits Cabinet approval before it commences to the Parliament.

The proposed draft Consumer Protection Bill recognises the following six rights of consumers: I) the rights to safety; ii) to be informed; iii) choice; iv) representation; v) redressal; vi) consumer education. Furthermore, from the UN Guidelines for Consumer Protection, 1985, two other rights of consumers are inferred: the right to basic needs and the right to a healthy environment.

The draft also addresses the following broad areas:

- **Safety requirements:** Defines what safe consumer goods are as well as provides for general safety requirements that consumer goods should comply with. It stipulates illegal acts that are punishable under the law.
- **Advertising:** It covers and defines what is permissible and otherwise in the process of advertising. It identifies acts that are punishable in the event of breach of law.
- **Guarantees:** Sets principles and guidelines for guarantees that clearly states that an offence to circumvent the law with regard to offering guarantees to consumers.
- **Measures for consumer redress and mechanisms:** Gives a broad set of options for defence, promotion, enforcement of consumer rights, including individual, collective, mediation, negotiation, arbitration or litigation.

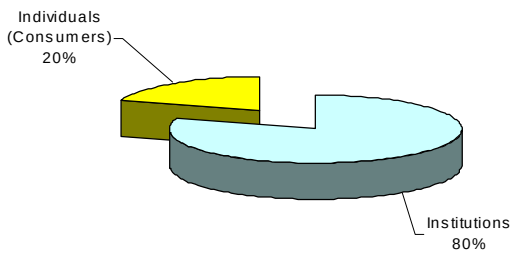
Perspectives on Competition

Overview

The survey was a follow-up to the earlier one carried out to gauge the baseline status of Uganda on market competition. The survey took place in November-December 2005 and covered public-private sector and CSOs as well as individual customers. A total of 100 institutions (80 percent) and individual consumers (20 percent) were sampled and their respective responses logged. From the survey findings, it was established that the vast majority of respondents averred that consumers are moderately affected by the practices, mainly bid rigging, unfair trading practices, price discrimination and market sharing.

Identifying trade, manufacturing and the services sectors as most affected, the respondents also contended that rules and regulations to check anticompetitive practices were inexistent. Some could not tell and were even not aware of the existence of the rules and regulations. The majority called for enactment of a comprehensive law to check anticompetitive practices whose objectives would focus on economic efficiency and consumer welfare. Details of the survey findings are available later in this chapter.

Figure 8.1: Survey Sample Size



Methodology

The survey was based on questionnaire-based interviews conducted under the direction of the 7Up3 Project team leader, CONSENT. The samples for the survey were, save for consumers, pre-selected samples of respondents selected from five stakeholder categories to wit: consumers; businesses/business support organisations (BUSOs); research and academic institutions (RAIs); law, policymakers and regulatory (LPR) bodies; and CSOs.

The pre-selection aspect of the sample was used to avoid respondents without any idea of issues at hand. Non-response in questionnaire interviews produces some known biases in survey-derived estimates because participation tends to vary for different subgroups of the population, and these subgroups are likely to vary also on questions of substantive interest.

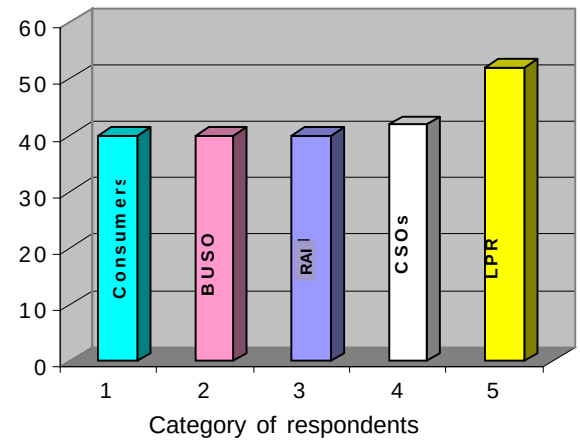
Sample Size and Survey Area

A sample size of 100 was administered, 80 percent of which were targeted at institutional respondents. This was aimed at gauging the knowledge of key stakeholders by category in a bid to ascertain their ability to meaningfully get engaged in the capacity building and advocacy elements of the project.

Choice and Nature of Respondents

Given the selection of respondents as well as limited sample, the geographical coverage of the survey was limited, although in terms of respondents who would be expected to actively participate in future project activities, the samples were meaningfully representative.

Figure 8.2: Level of Awareness of Anticompetitive Practices (ACPs)



Survey Findings

Awareness and Impact

Close to half of the respondents interviewed on average (consumers – 40 percent; BUSOs - 40 percent; RAIs – 50 percent; CSOs - 42 percent; LPRs - 50 percent) admitted that they had knowledge about the ACPs in the Ugandan market (Figure 8.2).

The results reflect that knowledge about competition issues is in comparison, appallingly low, even among the elite and the educated. Given that significant efforts were channelled into sensitising respondents before the interviews, the responses were an indicator of low business and economic literacy in the country.

A substantial proportion of the respondents stated that they were significantly affected. The breakdown was: Consumers - 50 percent; BUSOs - 45 percent; RAIs – 50 percent; CSOs - 40 percent; and LPRs - 35 percent (Figure 8.3).

The results were consistent with responses on awareness about competition. Still, this reflects that since few (half) of the respondents had knowledge about competition issues, a similar figure would be in position to appreciate its impact.

Most Prevalent Anticompetitive Practices

The most prevalent anticompetitive practices as perceived by respondents in the respective categories, in order of ranking (Figure 8.4) – from most to least important are: consumers (collective price fixing, price discrimination and resale price maintenance); business/business support organisations (bid rigging, unfair trade practices, entry barrier) and RAIs (collective price fixing, price discrimination, entry barrier). Other responses were: civil society (bid rigging, unfair trade practices and entry barrier); and LPRs (price discrimination, unfair trade practices and bid rigging).

Considered against perceptions on knowledge and impact, the responses on most prevalent anticompetitive practices are a reflection of a common characteristic in the country – behaviour symptomatic of but not necessary due to collusion. Also, price discrimination affects many consumers largely due to a common practice by traders who do not display retail prices. Consequently, buyers are charged through a discretionary approach using often undeclared and unknown criteria as basis for charges. A law (revised Sale of Goods Act) has been mooted that would provide for compulsory display of prices by retailers in the country.

'Recommended prices', viewed in the context of RPM, are ubiquitous in the marketplace, pushed by the manufacturers as part of their brand wars, in what is a clear manifestation of vertical restraints.

To businesses, that ranked bid rigging first, it was a reflection of both common sentiment and the reality that public procurement remains contentious. Frequent media reports and commissions of inquiry in the country provide a perfect background to the survey responses. In fact, formation of the Public Procurement and Disposal of Assets Authority (PPDA), under the broader legal framework of the PPDA Act, was in response to a dire need as well as a mechanism to restore confidence and protect competition in the public procurement arena. However, concern over UTPs and EBs reflects both frustration and powerlessness over practices normally a preserve of the 'rich club,' condemning the small enterprises to the cold.

For instance, misleading advertising that indirectly maligns competing products of smaller enterprises

Figure 8.3: Respondents Significantly Affected

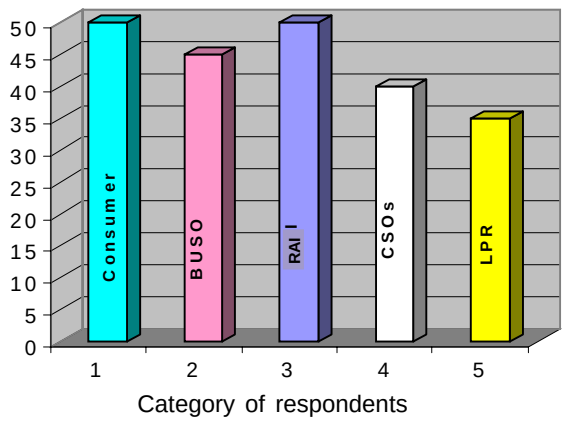
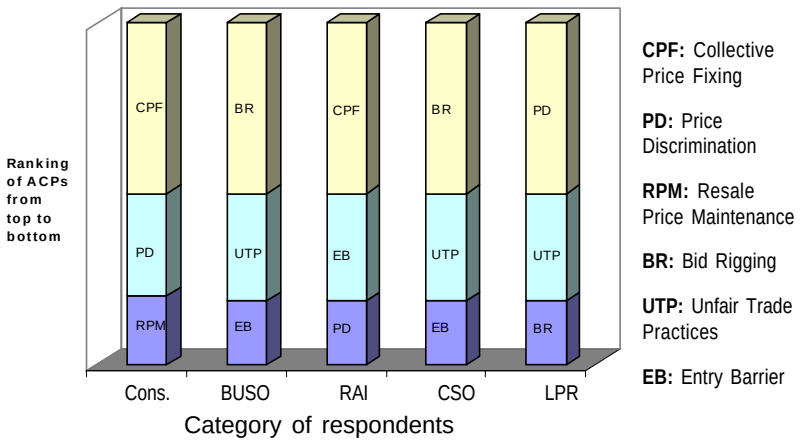


Figure 8.4: Most Prevalent Anticompetitive Practices by Category



devotes relatively less spend on advertising. Entry barriers are not a common phenomenon (few cases have been reported over time and scope). However, the survey wasn't designed to investigate details of the various dimensions of the responses.

Civil society had similar responses and rankings to the business community. Perhaps this reflected the level of awareness (mainly through research) and regular interface with and about the business community. Law/policy makers and regulatory bodies were a cross section between business (UTPs and BR) and research and academic institutions (PD). Perhaps given the assumption that the LPR stakeholder category has more custom of business-related data and information than any other stakeholder group of respondents, their views should be given additional focus, their limited knowledge of anticompetitive practices (10 percent) notwithstanding.

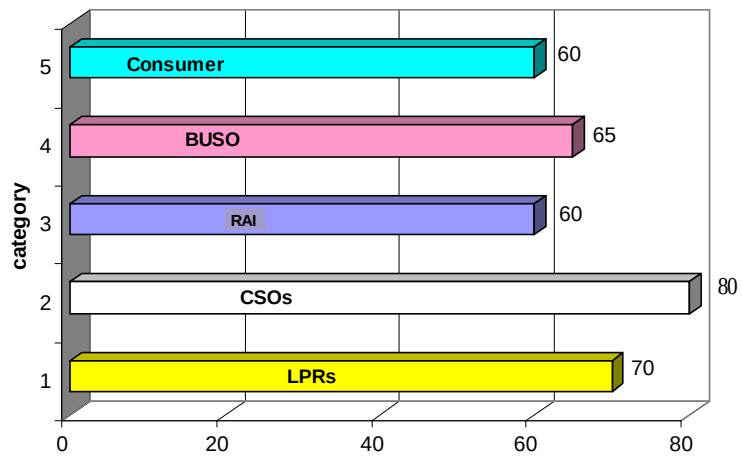
Effects on Economy

Agriculture, trade and services sectors were listed as the most affected economic sectors by the whole spectrum of respondents. The responses: consumers (agriculture, trade, services); BUSOs (trade, manufacturing and services) and RAIs (trade, manufacturing and services). Other responses were: CSOs (trade, manufacturing and services); and LPR bodies (trade, manufacturing and services). All categories of respondents were of the view that the trade and services sectors were affected most by anticompetitive practices. Only consumers listed the agriculture sector as affected. However, it could have been based on the fact that as final consumers, they had additional knowledge, particular on trade in goods (transport-marketing chain) that the other categories either did not have access to or considered anecdotal or inconsequential in the context of market competition.

The overwhelming percentage of respondents (70 percent) was of the view that some of the anticompetitive practices originate from outside the country as well. The responses were thus: (Consumers-70 percent; BUSOs-80 percent; RAIs–60 percent; CSOs-65 percent; and LPR bodies-60 percent).

This reflects the structure of the country's trade and manufacturing sectors, activities in which formed basis for responses got in the survey. With domination of the trade and manufacturing sectors by companies of foreign origin or joint ventures with local partners, the responses were therefore premised on current realities.

Figure 8.5: Perceived Scope of Anticompetitive Practices



Rules to Check Anticompetitive Practices

There were mixed reactions on the question of rules to check anticompetitive practices (Figure 8.6) with 60 percent of consumers surveyed saying they existed and an almost similar figure (50 percent) of respondents from the RAIs concurring and LPR bodies (70 percent) sharing the same view. Out of the rest, 70 percent of the respondents from the business sector said they did not know or were not sure. The majority (40 percent) from CSOs were not sure as well as with the rest either asserting in the affirmative or in opposition.

On average, the majority of respondents indicated that some rules existed to check anticompetitive practices. However, a significant number of respondents weren't sure about the rules. This question required knowledge about technical detail on the prevailing policy and legal framework, which to the majority was not clear.

Asked to substantiate their responses, most respondents could not name any laws and regulations that completely address other business/industry or behaviour/practices. However, some responses indicated some knowledge about laws that to some extent address competition in general but not specifically anticompetitive practices. These include: UNBS Act, CMA act, UCC Act, among others. Prompted on action taken by the authorities to combat anticompetitive practices, respondents were split down the middle, with half saying sometimes action is taken and the rest stating in the negative.

Consumer Protection and Justice

Uganda National Bureau of Standards (UNBS) emerged as the most popular institution perceived to be offering protection to consumers and require competition in the marketplace. The respondents (consumers-50 percent; BUSOs-45 percent; RAIs–20 percent; CSOs-50 percent; and LPR bodies-50 percent). This was not surprising given the enduring media coverage of the quality certification body's activities in enforcement of standards. UNBS does not have mandate in law to regulate competition. Neither is consumer protection its primary role.

Competition Policy and Law Framework

All categories of respondents averred that regulations in place to check anticompetitive practices were not enough (Table 8.2). Less than half of the respondents gave their views on this question, understandably, if considered against respondents' knowledge and impact of anticompetitive practices. The views reflected the perceptions of an unregulated market. Nevertheless, on the question that followed, an overwhelming majority endorsed the need to enact a comprehensive law on competition regulation. At least 70 percent and above across all stakeholder categories (with 100 percent apiece for consumers and law, policy and regulatory sector) calling for enactment of a specific policy and law to address competition regulation.

Scope and Safeguards

Still, the majority of respondents were of the view that the law should not only cover competition as an avenue to ensure economic efficiency but also consumer welfare as well. As a logical next step, most respondents gave their mode to a law that should cover all types of enterprises and persons, including all areas of commercial activity.

However, the respective stakeholder groups suggested activities and sectors that ought to be exempted from the proposed competition regulation framework thus: majority of consumers (35 percent - with the rest either not giving responses or responding otherwise); and civil society (50 percent) wanted SMEs exempted. So did 90 percent of respondents from the LPR bodies. The majority of BUSIs wanted public utilities off the hook, while RAI bodies wanted state-owned enterprises. The common denominator in the responses was that competition law should not extend to the public domain as well as to enterprises that benefit the poor (SMEs). Coming from consumers and civil society, the responses were a consequence of individual or group experience (consumers) and direct interaction with affected communities/groups (civil society and law/policymakers and regulatory bodies).

For businesses, the responses could be linked to the relatively high cost of doing business in Uganda that is widely understood to be exacerbated by the cost of utilities. Competition, it is feared by some, could worsen the status quo. When respondents from RAI bodies opted for exemption of state-owned enterprises, perhaps, given the knowledge base of the group, was premised on the philosophy that public resources or interests should be protected from laissez-faire competition and as far as can be established, adverse conditions since they are normally not profit-making but were set up to achieve social ends.

Table 8.2: Views of Stakeholders on Effectiveness of Existing Framework

Are regulations in place enough to ensure minimum competition?			
Stakeholder	**in percent**		
Category	**Yes**	**No**	**Cannot Say/Do not Know**
Consumers	10	30	10
BUSO	5	15	10
RAI	10	60	30
CSOs	5	30	10
LPR	-	100	-

Institutional Design/ Structure

The overwhelming majority of respondents were of the view that the proposed Competition Act should be at the centre of competition regulation in the country (Table 8.3). The apparently homogeneous response was linked to the practice in regulatory reform in the country. Reform has normally taken the form of

Table 8.3: Views of Stakeholders on Enactment of General law on Competition			
Should competition law be enacted?			
Stakeholder Category	**in percent**		
	Yes	**No**	**Cannot say / Do not know**
Consumers	90	10	-
BUSO	100	-	-
RAI	70	20	10
CSOs	95	-	5
LPR	100	-	-

setting up specific sector regulatory (SSR) bodies to oversee all aspects of regulation. Endorsement of the Act should be seen in this light.

Powers and Roles

On the crucial question of powers of the proposed Competition Authority (CA), consumers were split down middle in the proposal of a CA with both investigative and adjudicative, and one with investigative powers only with adjudicative powers vested with a separate authority. Both responses accounted for 35 percent. The choice of consumers could be appreciated when the prevailing frameworks are considered. Consumers normally prefer services on a 'one-stop-centre' principle, rather than a stratified institutional set-up, a structure that is normally linked to bureaucratic red tape.

Respondents from businesses and business support organisations were also split down the middle: some 40 percent of the responses endorsed a CA with both investigative and adjudicative powers, with a smaller percentage opting for one with investigative powers only, while adjudicative powers are vested with courts of law. On the era of state-owned monopolies, courts of law were the last resort in case businesses sought justice in the marketplace. The views, therefore, could have been formed in this respect other than out of informed pragmatism. Respondents from RAI bodies wanted a separate body, a decision construed as based on the desire for separation of roles (investigative and adjudicative) to ensure independence in the process of hearings.

The majority of responses from all respective stakeholder categories endorsed the view that the CA should deal with UTPs and consumer protection issues as well. This was a logical outcome that corroborated the earlier positions, for instance that the CA should be a body whose roles would cover economic efficiency and consumer welfare as well as establishment of a law that would cover all enterprises, persons and business activities.

Also, the majority of respondents from businesses, civil society and research/academic bodies wanted specialised sector regulators (SSRs) given overall powers to handle competition regulation issues. Consumers wanted the CA to retain a coordinating role, while LPRs opined that that well as SSRs should be involved, the CA should coordinate with them. Views of CS, businesses and RAI were in line with the traditional institutional design of most SSRs. Consumers' and LPRs' views were tinged with 'checks and balances', in a bid to provide a locked-in mechanism that would ensure fairness and separation of roles/responsibilities.

Corporate/Personal Liability and Alternative Mechanisms

The majority of responses from the RAI, CS and LPR were equally split (Table 8.4). Those of the view that violations of the competition law should be criminalised in some cases were equal to those who said, in all cases, contraventions should be criminalised. Consumers endorsed personal criminal liability in some cases, well as RAI went for liability limited in all cases. In all, it worthy noting that all stakeholder groups opted personal criminal liability, underscoring their desire to put in place to regulate climate that deters personal impunity.

Table 8.4: Views of Stakeholders on Criminal Liability				
Should transgressions in competition law be criminalised?				
Stakeholder Category	**Percent Yes in some cases**	**Yes in all cases**	**No**	**Cannot say/ Do not know**
Consumers	65	35	-	-
BUSO	35	50	15	-
RAI	40	40	-	20
CSOs	45	45	-	10
LPR	40	40	-	20

COs, BUSOs and CSOs were of the opinion that the proposed law should have provisions to ensure right to private action. LPRs were equally split with those for and against right to personal equal. Only responses from RAI had a majority rejecting the right to private action. The views reflect the structure and nature of the traditional commercial justice system that contains flexibilities, including the right to private action.

Competition Advocacy

All stakeholder categories were of the view that the proposed CA should involve different stakeholders in its functioning, especially advocacy and publicity. In view of the era of private-public partnerships, this was expected. Also, all the stakeholder categories were of the opinion that businesses should try to balance their profit motives with consumer welfare.

However, on the important question of how respondents would react of they encountered any ACP, all but consumers were of the view that they would seek help from consumer organisations. For their part, majority of consumers said they would do nothing about it. The apparent irony is based on the reality that consumers know better that COs do not have powers and mandate to redress market mal-practices, well as others simply assumed that they could get justice from COs.

Broken down, the others' response included amicable settlement with goods/service provider or by approaching the relevant sectoral umbrella body or regulator, among the main responses.

Conclusion

Recommendations and conclusions have been stratified to map out the obligations and challenges that exist, or that need to be addressed in order to have a functional and effective competition regulation regime in the country.

General Conclusion

i. Competition policy and law can have a role to play in ensuring that trade liberalisation is not undermined by anticompetitive behaviour.
   Scoped and implemented appropriately, competition regulation should play a considerable role in checking adverse effects caused by malpractices and structural weaknesses in the emerging free market in Uganda. In the long-run, such interventions should protect the process of liberalisation from a host of threats, including political backlash by a polarised populace at variance in terms of benefits from the prevailing system.

ii. Ugandan competition law and policy could encounter major challenges when it comes to emerging international phenomena like cartels and mergers. This calls for additional safeguard measures or mechanisms to check the external threats.

   Foreign investments are increasingly finding their way into the economy through non-traditional channels like M&As. Well, as it represents a faster way to set up and operate businesses, when unregulated, it may hurt competition through possible collapse of some of the 'losing' competitors, with adverse consequences to the state (loss of taxes, jobs, etc) and consumers (welfare reversals occasioned by reduced options or increased prices).

iii. The crafting and ratification of the COMESA competition framework should provide the necessary linkages and support to address competition-related cross-border concerns in Uganda and the immediate region.

   With ever-deepening economic integration COMESA (mainly Kenya) is the country's second largest trading partner); this presents challenges related to conduct of companies that trade across borders of the 20-member states of COMESA. Therefore, linkages across common boarders in the economic bloc should be established or strengthened to address competition-related concerns.

iv. Uganda has no specific legislation on competition, although there are policies used to influence the local markets e.g. trade policy, investment and licensing regulations, company and partnership laws, labour and environment laws.

   Systematic and effective competition regulation within and between the country and its trading partners would require the enactment of a competition law. Yet, as most countries in COMESA have enacted appropriate laws or amended deficient ones, Uganda does not have one in place. This would undermine efforts, internal or joint, to check anticompetitive practices.

v. Enactment of competition policy and law and setting up an enabling institutional framework need to be expedited and implemented to enable the setting up of benchmarks for proper conduct, mechanisms for monitoring, sanctions and redress mechanisms.

   Proper sequencing and coherence in competition regulation would require specificity, fairness and transparency, an aspiration possible through a clear framework on competition policy and law.

Challenges the Government Has To Address

i. Low stakeholder awareness

Results from the survey, shared, indicated that relatively few stakeholders were aware of the practices broadly defined as anticompetitive or unfair as well as possible effects of the same on the respective category of stakeholders. This

portends serious consequences to victims and unjustifiable reward to businesses involved in the malpractices. In view of the foregoing therefore, the need for awareness creation is paramount.

ii. Harmonisation of sectoral and general competition regulation regimes

Sectoral regulation, put in place shortly before and, in some sectors, after privatisation was informed by frameworks with a wide array of provisions, including the facilitation of competitive markets. However, competition regulation per se is not adequately provided for, for sectors where it was recognised (energy/ power, communications etc). Also, with the imminent enactment of competition policy and law, a clear mechanism on how the two regimes (sectoral regulation and competition regulation) will interface should thoroughly be examined.

iii. Further adjustment of the economy to attract quality investments

Macro-economic re-alignment of close to two decades has led to considerable transformation of the country's economy. However, in order to deepen the gains, particularly, to have long lasting impact on the socio-economic spheres (through increased investment, etc), there is need, where necessary, to regulate activities of the dominant private sector. This should dispel fears and lower risks as perceived by prospective investors (mainly from overseas).

iv. Absence of or a weak auxiliary policy and legislation

Given the reality that competition policy and law cannot be expected to be a panacea for market imperfections or shortcomings, the need for enactment and enforcement of auxiliary policy and legislation cannot be overstated. These should include laws related to: consumer protection; sale of goods; contracts; customs management; and product standards, among others.

v. Harmonising economic and trade policies within the EAC and COMESA region

With further economic integration, Uganda will increasingly need to harmonise her policies and laws with sister countries in the EAC and COMESA. This should forestall major difficulties, and possible gridlock cross border implementation of law or honouring obligations, or enjoyment of rights and other entitlements.

Expected Government Action

To realise effective fair trade regime and consumer welfare, especially since there might still be some time before the competition law is passed, it is pertinent that the following are put in place:

i. Stakeholder awareness and education programmes should be stepped up throughout the country in a bid to facilitate understanding and subsequently, general support for a market-driven competition regulation and consumer protection dispensation.

   Focus should be directed on supporting stakeholder awareness initiatives, as well-informed stakeholders are expected to drive effective implementation and enforcement of the soon-to-be-enacted competition policy and law as well as the establishment of a competition culture in the country.

ii. In a bid to enhance competition, developments like mergers and takeovers need to be governed by enforceable rules so as to protect small businesses, consumers and promote fair trade in general. At the moment some rules, in the realms of privatisation exist. However, comprehensive rules to govern all sectors and enterprises need to be put in place as well as monitoring mechanisms.

   Cases exist from the privatisation process and, generally, liberalisation of the economy where takeovers and mergers resulted into restructuring of markets (market share) leading to difficulties and, or collapse of small businesses. This, theory and reality, would have a deleterious effect on consumer rights and welfare, which calls for mitigating measures to be put in place most effectively through competition law, including by amending some of the existing laws.

iii. The expected competition framework should be coherent with national development strategies for poverty eradication, sustainable socio-economic development, other sectoral regulatory regimes as well as regional and multilateral initiatives.

   There is evidence, particularly in the commodity sector onto which the country still depends significantly, that ill regulation of competition could lead to severe consequences. It follows therefore, that competition regulation should be examined beyond the narrow confines of checking adverse effects on firms to potential of ruining livelihoods of millions of predominantly poor people.

iv. Functional consumer protection regimes should be established and promoted to ensure efficiency, economic growth, best practice, quality assurance and fair trade.

The public sector (government) should be advised that it will require more than enactment of relevant policy and law but establishment of an effective framework requires professional enforcement backed by sufficient resources. This should be planned for in advance.

v. There is need to expeditiously enforce the EAC competition policy, particularly in view of real and potential challenges related to the emergence of the EAC Customs Union.

vi. Establishment of a competent authority manned by professional and experienced manpower to address the increasingly complex challenges in the economy.

Countries that have recently embarked on regulation (through law and policy) have encountered problems related to manpower gaps, as professionals with relevant skills and experience are hard to come by. Also, institutional, readiness and training interventions are needed.

vii. Enactment or review of auxiliary policy and legislation to ensure general readiness of the country's trade sector to anticipated changes. These include trade policy, investment, privatisation, policy on SMEs and labour, among others.

viii. Strengthening sectoral regulatory bodies to build their capacity play their expected roles in competition regulation.

Sectoral regulatory bodies, by their very nature, will play a pivotal role in competition regulation. However, they require capacity building to elevate their readiness in a bid to play their expected roles.

ix. Government should lend the requisite political support for the anticipated market dispensation by way of enactment of supportive legislation, followed by their enforcement.
The public sector (political leadership) will need to use advocacy measures to help support mechanisms aimed at bringing about a competition culture for socio-economic growth and development.

x. In light of the existence of sectoral competition regulation (in some sectors), establishment of a comprehensive competition regime could encounter barriers at implementation stage. There is therefore need for harmonisation of sectoral and general competition regulation regimes to avoid anticipated conflict.

Where specific sector regulators (SSRs) are mandated to enforce competition in the marketplace, care should be taken, through provisions in the proposed competition policy and law that clearly assign roles, responsibilities and obligations but avoid fomenting possible conflicts between the envisaged competition authority and SSRs.

Note: This chapter has been researched and written by Shaban Sserunkuuma of Consumer Education Trust of Uganda (CONSENT), Uganda with inputs and views from Kimera Henry Richard of CONSENT, Uganda. The author acknowledges the comments received from the members of the Project Advisory Committee. Comments and suggestions on the structure and content of this paper were received from Nitya Nanda of CUTS C-CIER and incorporated appropriately.

CUTS Centre for Competition, Investment & Economic Regulation

Mission

Promoting fair markets to enhance consumer welfare and economic development

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Develop healthy competition regimes in developing countries through research and advocacy.

Strengthen capacity of state and non-state actors on relevant issues, particularly in developing countries.

Foster an enabling environment for the economy and promote effective regulatory frameworks.

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The 7Up Model: Approaching From The Bottom

The effectiveness of competition law depends on the extent to which the law has actually evolved in a country in tandem with socio-economic and historical developments in that country. It is necessary that there be some amount of acceptability and ownership of the law among the stakeholders, which is possible only if their expectations and concerns are taken into consideration while drafting, implementing and revising the law, and if their capacity is built up to the point where they can effectively participate in the enforcement process. This is essentially the inspiration to the bottom-up approach of the CUTS's 7Up Model.

> *"Some NGOs, especially consumer groups, can be strong allies for competition policy and law because they know how it can benefit consumers. Donors could find it effective to fund relevant work by reform-minded NGOs, especially those based in developing countries. DFID has funded research and advocacy programmes (such as the CUTS 7Up projects) that include participation by local consumer groups"* (Implementing Competition Policy in Developing Countries, OECD Development Assistance Committee Hot Topic Paper, 2006)

The model involves partnering with local research and advocacy institutions in project countries, engaging a wide range of local stakeholders including the business, the polity, consumer groups and other NGOs, media, academia, lawyers, etc. in National Reference Groups, carrying out perception surveys, and undertaking several research, advocacy and capacity building activities.

In addition to the critical role of coordinating and maintaining the sustainability of the project, CUTS provides required expertise to the target beneficiaries. Flexibility is strongly retained to ensure that the demands and most urgent needs of the beneficiaries be met, while complementarity and synergy with other initiatives are kept in mind.

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