The African Competition Forum (ACF) was officially launched 3 March 2011 with the financial support of the International Development Research Centre of Canada and the Department for International Development in the United Kingdom. The launch conference was co-hosted by the Kenyan Monopolies and Prices Commission.

The ACF is a network of African national and multinational competition authorities or where authorities do not exist, government departments or line ministries responsible for competition policy and enforcement. The ACF seeks to promote the adoption of competition principles in the implementation of national and regional economic policies of African countries, to alleviate poverty and enhance inclusive economic growth, development and consumer welfare by fostering competition in markets, and thereby increasing investment, productivity, innovation and entrepreneurship.

The ACF counts on the participation and contribution of all ACF member states’ competition authorities, regional and international organisations. The ACF encourages African national and regional competition authorities from different regions and stages of development to participate and contribute to the dialogue, capacity building and networking among policy makers and enforcers.

The ACF provides competition authorities with a specialized network for maintaining regular contacts and addressing practical competition concerns that are specific to the circumstances of the African continent. This allows for a dynamic dialogue that serves to build skills and identify solutions to handling anti-competitive practices affecting individual countries, as well as those that may have a cross border impact; promotes competition principles as a tool for economic development and poverty alleviation; and advocate for policy coherence between competition law and public policies.

The main goal of the ACF is to improve and advocate for sound competition policy and its enforcement across the African continent; it seeks to develop and promote sound procedural and substantive principles drawing on best and relevant practices developed by members, regional and multilateral organisations.

In all this work, the ACF leverages knowledge and expertise, inter-alia, in the ICN, OECD and UNCTAD fora. The ACF provides an overarching forum bringing together competition agencies, academia and other experts for the purposes of enabling knowledge sharing on the formulation and enforcement of competition laws and enhancing engagement with new agencies at different stages of development, as well as government departments handling competition policy matters on the continent.

The focus of this edition is the cooperation, capacity building and research work undertaken by ACF and its partners. To this end we look at the 3 research projects launched by ACF in airlines, construction and a joint benchmarking study with the World Bank. There are pictures of workshops hosted for mergers and cartels experts within ACF member states and across the continent.

In order to make each newsletter relevant and insightful, peer review and suggestions will be appreciated and can be directed through the ACF Secretariat. We hope you enjoy this edition of newsletter.
FEDERAL COMPETITION AND CONSUMER PROTECTION COMMISSION OF NIGERIA

BACKGROUND
Nigeria in so many ways has been described as the largest economy in Africa, however, only recently is it counted among the committee of nations with a robust and active competition regime.

The idea of a competition regime in Nigeria spans over 17 years, the bill for the establishment of a competition commission witnessed several change in administrations and reboots, until 2019, when the President of the Federal Republic of Nigeria signed the bill into law, establishing the Federal Competition and Consumer Protection Commission (Commission), repealing the Consumer Protection Council Act and collapsing the Consumer Protection Council (CPC) into the new Commission.

OUR WORK
Key areas of our work include:
• Advice the Federal Government on policies relating to competition
• Carry out investigations or inquires relating to anti-competitive conduct
• Review and make determination on Merger applications
• Carry out advocacy and sensitization programs
• Collaborate with industry players and international organizations/ agencies for Nigeria’s competitiveness

Between January and June 2019, we undertook several market monitoring exercises, advocacy and collaborative measures including:
• Professional Capacity development programs for staff of the Commission
• Regulations on Foreign to Foreign Merger
• Published threshold on Mergers
• Advocacy initiatives with several stakeholders such as capital market, social media influencers, journalists, judges etc.
• Engaged several development partners.

THE LEADERSHIP
Babatunde Irukera is the Chief Executive Officer of the Federal Competition and Consumer Protection Commission responsible for the day-to-day management and leadership of the Commission, recognizing the international nature and propensity for impact on foreign businesses, he began the process of seeking collaborations that would ensure a firm and consistent approach globally.

Babatunde Irukera
Chief Executive Officer of the Federal Competition and Consumer Protection Commission

Of particular statutory provision, institutional desire and leadership priority, is a fair market place regulation that promotes Micro Small Medium Scale Enterprise (MSMSE) and a robust policy of enforcement approach, which accomplishes the dual vital objectives of strengthening both competition in the market, and Nigeria’s competitiveness.

The Commission has published its Merger threshold pursuant to the law, and has released its first Foreign to Foreign Merger Regulation to ensure the market is undisturbed, while executing Memorandum of Understanding with the Securities and Exchange Commission (the agency of government previously ceased with the responsibility to review and approve mergers).

Irukera’s record of advocacy and representations in competition and consumer protection issues are exceptional, and provides the clarity both the Commission and industry need with respect to the dual mandate of consumer protection and promoting a level playing field in the Nigerian market place, while ensuring regulatory stability. Accordingly, and in furtherance of the dual mandate, Irukera hit the ground running; with respect to implementation of the Act, he has since begun the task of professional capacity development for staff of the Commission, pursued the membership of the Commission in various international organizations to aid cross border interactions and support, carried out advocacy programs, initiated and negotiated several Memorandum of Understanding with sector regulators and operators to ensure regulatory clarity among others.

Irukera’s unique combination of advocacy, commercial practice and reputation provides the required mutual industry/ regulatory assurance and balance for a vibrant and robust consumer protection regime that promotes business stability and investment, as well as consumer satisfaction and confidence.

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GHANA MAKING MOVES TOWARDS THEIR COMPETITION LAW

Ghana is speeding up the processes for passing into law its Competition Policy which has become urgent because it is a necessary condition for the implementation of Phase Two of the Africa Continental Free Trade Area (AfCFTA) in December this year.

Currently, Ghana’s Competition Law is now at consideration stage by Cabinet.

Its passage is critical to the various implementing parties in the sense that Ghana has to meet the December 2020 deadline for implementing the second phase of AfCFTA of which the Competition Law is listed as one of three protocols set to be implemented to safeguard that phase of the agreement which also includes Investment Policy and Intellectual Property Rights.

The preparations follow the recent 10th African Union Commission (AUC) and European Commission (EC) meeting held in Ethiopia where the latter stressed the importance of the second phase negotiations of the agreement and entreated member states who have not yet instituted competition policy to institute measures aimed at implementing the policy.

Ghana has accepted the need for a competition law (known in many jurisdictions as anti-trust law), but has not prioritized drafting a law, until now.

Several industries have near monopolies with regards to market share, which will be affected by passage and implementation of a competition law. For instance, MTN, the pioneer of Mobile Money in Ghana still has a dominant market share of over 90 percent despite competition from both AirtelTigo and Vodafone.

Instructively though, while this gives MTN the opportunity to use preferential intra-network pricing to keep customers, it has declined to exploit this opportunity to its advantage. Indeed, the tendency of many large firms to refuse exploiting monopoly or near monopoly market shares increase profit margins at the expense of their customers is a major reason why government has not bothered with a monopoly law up till now.

The Phase Two protocols aim to enhance the investment policy climate as well as address risks facing businesses and investors on the continent. Already, the two Commissions have agreed on the need to prioritize regional infrastructure as an underpinning element of AfCFTA.

The impending law will need to contain elements that give opportunity to new entrants with very small market shares to increase them and also to ensure that where a competitor has an overwhelmingly large market share, it does not take advantage to set exortionist product prices.

Generally, around the world, a market share of 70 percent or more requires anti-trust regulations to kick in.

The Competition Policy is expected to protect, maintain and develop free, fair and equal competition in the market space by making it illegal for businesses to abuse a dominant market position. Having such a regime will also ban anti-competitive agreements between firms who have instituted agreements to fix prices or to carve up markets.

For instance, Small and Medium-sized Enterprises (SMEs) will have a level playing field to be able to compete with their multinational business counterparts and this measure would encourage enterprise efficiency, create wider choice for consumers, curb monopolist or oligopolistic pricing and ensure the need for producers to improve the quality of their products in the market.

With the absence of this law, some businesses engage in restrictive trade practices such as bid-rigging, price-fixing and abuse of dominance through monopolistic and oligopolistic product pricing; and when these occur, consumers do not receive optimal value propositions.

Currently, about 23 African countries have competition laws enforced, but 17 have no competition laws in place, while 10 have instituted competition laws, but have no authority to enforce them. Four countries have competition laws in advanced state of preparation.

Alan John Kwado Kyeremateng
Minister of Trade and Industry
ANGOLA ADOPTS NEW LAW AND ESTABLISHES A NEW REGULATOR

Created by Law 5/18, of 10 May (Angolan Competition Law), the ARC is an administrative body which acts with independence and autonomy, supplemented by the President of the Angolan Republic, with the mandate of regulating national competition.

The ARC has a Board of Directors composed of 3 members with one being the Chief Executive Officer and a staff of 36 employees, among which are competition lawyers and economists organized in 8 different departments as detailed in the organizational diagram below.

Board members are appointed by a Presidential Decree with the current Board members are appointed by a

As aforementioned, the ARC is composed of 8 departments, 5 of them being the Executive Services Departments which consist of:

1. MARKET RESEARCH AND MONITORING DEPARTMENT

The Executive Service which has the competency to make recommendations on public matters having an impact on competition, the competence to

2. MERGER CONTROL DEPARTMENT

The executive service that is responsible for analysing, studying and advising of notified mergers to the ARC, implementing and monitoring merger decisions and conducting economic analysis on the impact of mergers.

3. PUBLIC-AID CONTROL DEPARTMENT

The executive service responsible for the control, monitoring and evaluation functions of governmental aid to the economy, advising in the form of studies on the impact of such aid on competition and proposing the necessary recommendations to eliminate the negative effects on competition.

4. INVESTIGATIVE CONTROL DEPARTMENT

The executive service responsible for the control of anti-competitive practices, such as the abuse of a dominant position, abuse of economic dependence and prohibited concerted practices, it is ergo the responsibility of this Department to ensure the application of competition norms and rules and to conduct investigations and inquiries which may be deemed necessary to assess any breaches of the Competition Law.

5. LEGAL AND CONTENTIOUS DEPARTMENT

This is the executive service responsible for the legal, judicial and litigation matters concerning the ARC. It involves instructing sanctioning processes, preparing draft legal diplomas on matters falling within the sphere of activity of the ARC, providing legal advice on matters relating to investigation and decision-making in the context of harmful practices and merger control as well as cooperate with judicial authorities that decide on competition matters.

The remaining 3 departments are made up by the Grouped Support Services and are responsible for the administrative, financial, patrimonial and human resource management of ARC, namely:

6. SUPPORT TO THE BOARD OF DIRECTORS

This Department performs the functions of Executive Secretariat, exchange, documentation and information, it is therefore the responsibility of this Department to organize the agenda of the Chairperson of the Board of Directors, collect, select and disseminate information on the activities and functions of the ARC, ensuring relations with economic institutions and other international bodies.

7. ADMINISTRATIVE AND GENERAL SERVICES DEPARTMENT

Responsible for the administrative, budgetary, asset and financial management of the ARC, which involves controlling, organizing and ensuring the efficient circulation of the correspondence of the ARC, preparing quarterly balance sheets and annual accounting documents, as well as proposing to improvement of the functioning of control systems of internal financial reporting.

8. HUMAN RESOURCES AND INFORMATION TECHNOLOGY DEPARTMENT

This Grouped Support Service Department has the task of planning and managing Human Resources, as well as the use, modernization and updating of technological services, implementing for this purpose the system of job descriptions and professional profiles, with the appropriate qualification.

The Angolan Competition Law was approved and enacted in May of 2018. It sets out as prohibited practices, punishable with fines and other sanctions:

i. The abuse of a dominant position
ii. The abuse of an economic dependence
iii. Prohibits collective practices, in particular, agreements restrictive of competition, concerted practices and decisions or deliberations of associations of firms prejudicial to competition.

The newly enacted Competition Law also establishes a pre-merger notification regime and attributes competencies in competition advocacy to the ARC. The Law similarly provides specific powers to the ARC, such as the promotion of sound competition in its supervisory regime in Angola seeks to promote competition and efficiency in the production and distribution of goods and services for a more dynamic and competitive economy, to the benefit of the consumer.

The ARC last year received various merger notifications from diverse sectors such as insurance, petroleum and civil construction. It has, furthermore, also received numerous complaints in the form of anonymous complaints in order to protect the soundness of competition in the country.

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INTRODUCING THE ECOWAS REGIONAL COMPETITION AUTHORITY: WEST AFRICA’S REGIONAL COMPETITION REGULATOR

INTRODUCTION

In 2008, the Economic Community of West African States (ECOWAS) adopted a Regional Competition Policy Framework (RCPF), articulating the purpose and basic principles of competition law and its many benefits to the ECOWAS Market and the regional integration process. Following the RCPF, ECOWAS took two steps in 2008 to establish a framework for regional competition regulation in West Africa: (i) adoption of the Community Competition Rules1; and (ii) enacting a law establishing the ECOWAS Regional Competition Authority (ERCA). The adoption of the Competition Rules and establishment of ERCA are important steps toward achieving market efficiency, economic growth and integration in West Africa which are fundamental objectives of ECOWAS.

ERCA commenced its operations in 2019, following the launching of its headquarters building in Banjul, Republic of The Gambia, with Mrs. Henrietta Didigu as the Acting Executive Director.

JURISDICTION

ERCA’s mandate is to keep under review, commercial activities in the ECOWAS Market with a view to regulating practices which may distort the efficient operation of market conduct or which may adversely affect the economic interests of consumers. ERCA’s jurisdiction extends to restrictive business practices, cartels, state aid, mergers and other business combinations, whether private or state-owned, which affect competition in West Africa.

It is noteworthy that ERCA’s jurisdiction is only triggered in cases with a regional dimension, i.e. cases which affect the ECOWAS Common Market and which may not be conveniently regulated otherwise than within the framework of regional cooperation. Accordingly, national competition regulators continue to have jurisdiction in cases within their domestic markets, while ERCA acts in cross-border cases.

In carrying out its functions, ERCA has full powers to, among other things, investigate an enterprise, summon and examine witnesses, request for information, sanction defaulting enterprises, grant exemptions where necessary, and award compensation to victims of anti-competitive practices. Enforcement of ERCA’s decisions is through a competent authority designated by the relevant Member State.

ORGANIZATIONAL STRUCTURE

The implementation of the Competition Rules rests with ERCA and the Consultative Competition Committee established under Article 13(4) of the Competition Rules.

Primary enforcement of the Competition Rules is done by ERCA. ERCA is headed by an Executive Director, assisted by two Directors and staff necessary for its smooth functioning. The following operational divisions exist in ERCA:

i. Mergers and Acquisitions;
ii. Competition and Economic Research Analysis;
iii. Legal, Investigation, Compliance and Enforcement; and
iv. Communications and Advocacy.

ERCA is assisted by the Consultative Competition Committee, a thirty-member Committee comprising two competition experts from each ECOWAS Member State, each appointed for a four-year term. The Committee acts as an advisory body to ERCA in the area of competition and consumer protection.

CURRENT ACTIVITIES

Actual enforcement of the Competition Rules is yet to begin. The ECOWAS’ legal and institutional frameworks for competition enforcement are being reviewed by ERCA, to make for a robust competition regime that meets the needs of the region. Once this process is completed, ERCA will commence enforcement of the Competition Rules.

As a new agency, ERCA has been involved in capacity building for its officers and national regulators, forging partnerships with other competition institutions, and creating awareness for consumers and stakeholders in the public and private sectors within and outside the region, in a bid to foster support for ERCA’s objectives and compliance with the regional anti-competition rules and policy. ERCA has convened two meetings of technical experts since 2019 when it commenced operations. The first meeting brought trade and competition experts together in Banjul, in May 2019. The meeting provided a platform for consultations that would assist in charting a course for ERCA’s future operations, and produced a five-year Strategic Plan of Action for ERCA. A second technical committee meeting was held in October 2019 in Dakar, to officially inaugurate the Consultative Competition Committee, ERCA’s advisory committee.

CONCLUSION

Achieving market efficiency, region-wide economic growth and integration in West Africa are core objectives of the ECOWAS. ERCA is committed to achieving these objectives through a robust enforcement of the Competition Rules.

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CONSULTATIVE MEETING

COMPETITION COMMISSION SOUTH AFRICA AND ECOWAS REGIONAL COMPETITION AUTHORITY

Mrs. Henrietta Didigu
Interim Executive Director for the ECOWAS Regional Competition Authority

[Image of Mrs. Henrietta Didigu, Interim Executive Director for the ECOWAS Regional Competition Authority]
In 2019 the competition regulators of South Africa (Competition Tribunal and Competition Appeal Court) celebrated their 20 years of competition regulation having commenced operations in September 1999. Equally the Competition Commission of Mauritius also celebrated 10 years of competition regulation having started operations in 2009. Both institutions held conferences in August 2019 in South Africa and October 2019 in Mauritius to mark these anniversaries. We would like to congratulate both institutions for reaching these milestones. We would also like to extend our gratitude for both competition regulators steering the leadership of the ACF as Chair and Deputy Chair. Both institutions have been exemplar in competition regulation not just on the African continent but worldwide. To many more happy years of competition regulation in South Africa and Mauritius!

THE COMPETITION COMMISSIONS OF SOUTH AFRICA AND MAURITIUS CELEBRATE THEIR BIRTHDAYS
Ten years back, the term ‘competition’ took an altogether different meaning with the establishment of a dedicated legal regime – the Competition Act 2007, and its enforcing institution – the Competition Commission, with a mission to promoting competition in the interests of consumers, businesses and the Mauritian economy.

Driven by this mandate, the Competition Commission has, as enforcer and advocate, strived to ensure that consumers and businesses prosper in a competitive and innovative marketplace. From its fledging steps to set up a functioning institution back in 2009, the Competition Commission has matured along the enforcement curve and earned meaningful recognition on the importance which competition law and policy play within our economy and across borders. While continuing to build capacity, we have, throughout these years, invested our resources into 863 complaints, 255 enquiries, 48 investigations, 4 market studies, 36 Decisions and Advises, and 96 COMESA Competition Commission Merger Notifications. Our advocacy efforts have touched upon all layers of our business, legal, regulatory, and policy-making community. We have had the privilege of serving the regional and international antitrust community, as co-chair of the ICN Advocacy Working Group and the ACF Steering Committee.

This year we are not just blowing the Competition Commission’s 10th candle but we celebrate a ‘Competition Commission-rebranded’, unveiling a new corporate identity and newly articulated mission and vision statements, as we take on our next decade of activity. Bringing the Competition Commission’s officers around the table, as a think-tank for our rebranding, has helped us truly reflect on three core questions: What is it that we do?, Why do we do what we do?, and What do we want to achieve? There is no second-guessing it: Competition is our daily staple. Keeping competition at the heart of what we do, we will continue working to enhance competition in markets. Why? Because we want to create more economic opportunities for the benefit of all Mauritians. What we hope to eventually achieve as a result of our efforts is to be an impactful organisation within our economy, shaping business landscape and driving economic progress through the force of competition!

We look forward to the forthcoming era of our existence with renewed purpose and vigour, an enforcement wisdom gained from a ten-year enforcement record, and leading change, through our Law Review Project, by strengthening our legislative arsenal – all spelling the same story; that the Competition Commission is geared up to take new challenges through effective and robust enforcement amidst an evolving business landscape. On the advocacy front, we will continue building stronger ties nationally, regionally and internationally with the continued support of our partners and stakeholders.

As the pages of this souvenir book unfurl, we invite you to rediscover our enforcement and advocacy strides along the competition journey; to read from, our people, our stakeholders, and our peers, their thoughts on the Competition Commission; and to be part of the future we’d like to build for our people and our country. I take this opportunity to thank our people and all our stakeholders, whose contributions all along have been invaluable in helping us advance the competition cause.

But the competition journey must continue, and one thing for sure: whatever the bends and turns that lie ahead in this journey, we’ll work our way to take it to the finish line - keeping true to our core values - by Shaping markets and Furthering progress!

Deshmuk Kowlessur
ACF Vice chair Deshmuk
Competition Commission of Mauritius

COMPETITION AND CONSUMER PROTECTION COMMISSION OF ZAMBIA WINS 2019 WORLD BANK ICN AWARD

The Competition and Consumer Protection Commission (CCPC) won its third award from the International Competition Network (ICN) and the World Bank Group recognising the CCPC’s role in promoting competitive markets through enforcement success stories.

The CCPC won first prize for the theme of “Understanding the effects of competition policy on poverty and inequality in both developing and developed countries.”. It did so by demonstrating its contribution to improving markets in the wholesale and retail bakery sub-sector.

The ACF would like to congratulate the CCPC on winning this accolade and continuing its great work in Zambia and on the international stage.

REGIONAL INTEGRATION AND COMPETITION POLICY

On 15 June 2015, in Johannesburg South Africa, the African Union Assembly began negotiations on the African Continental Free Trade Agreement (AfCFTA). Following this, on 21 March 2018 in Kigali Rwanda, the African Union Heads of State adopted the legal instrument establishing the African Continental Free Trade Area. To date, 29 of the 55 countries on the African continent are signatories to the AfCFTA.

This is a significant development for the continent as regional integration holds many opportunities including the potential to enhance intra-Africa trade and investment. Compared to other regions across the globe, intra-Africa trade which is around 17% of total trade is lagging behind other regions including, intra-Asia trade (52%), intra-North American trade (50%) and intra-EU trade (70%). It is envisaged that regional integration can enhance intra-Africa trade through, amongst other things, the progressive elimination of tariffs, harmonisation of rules to manage non-tariff barriers, the facilitation of cooperation on customs, trade facilitation, trade transit, technical barriers to trade and sanitary and phytosanitary measures. Further, part of the in-built agenda to develop the AfCFTA includes the preservation of the 8 Africa regional economic communities (AMU, CEN-SAD, COMESA, EAC, ECCAS, ECOWAS, IGAD and SADC) as the building blocks to regional integration. As with large trade agreements, negotiations are usually phased, with Phase II issues of investment, intellectual property and competition expected to commence this year (2020).

Strong competition policy is integral to regional integration and overall regional economic growth. There are many benefits to competition policy including aggregate economic benefits such as lower pricing, innovation and growth. Distributional benefits such as contributing to the reduction of inequality, poverty reduction and employment. Social and public policy benefits such as fighting corruption by dealing with practices such as bid rigging.

For competition practitioners and policymakers on the continent, thinking around a regional competition policy approach provides an exciting opportunity to consider questions of how a regional competition policy model ought to look like including the most appropriate models of cooperation and/or institutional arrangements for regional competition law enforcement and policy. There is a spectrum across which regional economic integration can occur, moving from a preferential trade area right up to complete economic integration. Undoubtedly there is a correlation between the extent of regional economic trade integration and how policies and laws are implemented within that region. This can be illustrated by looking at the Tripartite Free Trade Area arrangements across COMESA, EAC and SADC which moves from a centralised model, which is synonymous with complete regional integration to a decentralised model of cooperation.

There are broad implications of the choice of model that the African region can adopt. For example, there must be recognition to different levels of development of competition policy, laws and institutions in each member state across the continent. This is of significance where there are disparities in whether there are existing competition laws within the member states and/or the relevant enforcement institutions and courts. This factor will determine where on the spectrum the most appropriate regional competition model should be placed based on legal support, policy support as well as enforcement capacity.

Further, for those countries with laws and institutions, it should be recognised that the local context influences the content of policy and law and the nature of institutions. This will have an impact on the appetite of some member states supporting the adoption of any regional competition policy model. For example, where there are no laws or institutions, the existence of a supranational competition law and institution(s) may be ideal in order to ensure that the supranational legislation plugs any existing gaps. However, and equally, it may be better to allow flexibility to member states by encouraging a more cooperative framework focused on building laws and enforcement institutions which will be essential in anchoring any regional competition law along with providing the necessary support for any supranational institution. The success of supranational laws and institutions still depend on domestic support at member-state level. Therefore, the existence of some gaps in competition legislation and enforcement institutions may be indicative of the appetite of those member states, which cannot be ignored.

The starting block now appears to be whether the aim of the continental competition policy will be a binding and supranational system or a non-binding system reliant on cooperation with a view to harmonisation over time. These considerations will necessitate a balancing of the pros and cons in adopting binding or non-binding mechanisms. Non-binding mechanisms of cooperation can be more beneficial as they are easier to negotiate and are usually between enforcement institutions and not state-to-state. They are less costly to implement and monitor and give allowance to differences between member states policies and laws along with levels of economic development. Conversely, due to their non-binding nature, these mechanisms are highly reliant on the goodwill of member states making them harder to enforce and monitor, which impacts efficacy.

Binding mechanisms can be beneficial by, amongst other things, compensating for inertia in member states where there is no will or effort to implement competition law. However, this will require commensurate application of sanctions for deviation from the rules as well as an effective dispute resolution mechanism. From a regional perspective, binding commitments may signal commitment by member states to principles of fair play, thereby attracting and growing regional investment. Binding commitments can be a catalyst for reform and dealing with inertia. Conversely, binding mechanisms require time, effort and resources to negotiate and conclude. Moreover, a regional binding mechanism is likely to limit national sovereignty and depend on a high probability of compliance in order to give them effect.

A lot of work will be undertaken for regional competition authorities and policymakers this year and beyond as we embrace the regional integration agenda with the view to enhancing competition and economic development on the continent.

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INTERNATIONAL COOPERATION
AND PARTNERSHIPS

UNCTAD

UNCTAD is a focal point in the United Nations for all matters related to competition policy, based on its three decades of work on the Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices (UN Set on Competition). The mandate of the Set is based on the United Nations (UN) General Assembly resolution 35/63 of 5 December 1980. The overall objective of UNCTAD work on competition and consumer protection policy is “the creation of a safe, stable and attractive environment for enterprise and industry, through fair, sound and robust national competition and consumer protection laws and policies which are crucial for inclusive and sustainable development.” The competition and currently consumer protection work programme is set and reviewed every 5 years by the UN Review Conference of the Set on Competition.

The UNCTAD Consumer protection docket is based on the revised United Nations Guidelines for Consumer Protection (the Guidelines) adopted by the UN General Assembly resolution 70/186 of 22 December 2015. The General Assembly reaffirmed the Guidelines and their implementation, reaffirming the need to ensure that all States are able to have and enforce effective consumer protection legislation.

The mandate of the UNCTAD work programme on competition and consumer Protection.

UNCTAD work programme on competition and consumer Protection.

The Competition and Consumer policies programme provide a forum for intergovernmental deliberations through the annual meetings of the Intergovernmental Group of Experts on Competition and Consumer Protection Law and Policy (IGEs), which discuss current issues on competition and consumer protection, supported by research, policy analysis and data collection which informs the consultations.

Back to back with the IGEs, the reports developed under the Research Partnership Platform (RPP) work stream are circulated and feed into the IGE and inform their discussions. Guidelines, tools and lessons learnt are compiled following these discussions and are disseminated to member States and relevant stakeholders, which use them to improve the effectiveness of their competition and consumer protection authorities. These include the UNCTAD Model law on competition commentaries (part 1) updates which have over the years guided member States in drafting, revisions and designing various programs.

Technical assistance to developing countries is a key element of UNCTAD’s work. It assists member States to strengthen their capacities in enforcing their respective laws, it advocates the contribution of both competition and consumer policies to economic growth and sustainable development. Findings and lessons from the technical assistance projects are then fed back and used to inform the research and intergovernmental deliberation components of UNCTAD’s work. Global delivery of in-depth technical assistance, which covers countries in Latin American, African, Eastern Europe and Western Asian countries, Caribbean region and Asian region has been at the core of UNCTAD’s comprehensive long-term technical assistance to strengthen competition and consumer protection policies and enforcement systems.

UNCTAD capacity building programmes in partnership with member States has led to a multiplication of impact through regional leaders. The experience gained so far through capacity building activities in competition and consumer policies has proved that by working with countries with strong competition and consumer protection agencies such as Indonesia, Brazil, South Africa, Zambia, Kenya, Serbia, Colombia and Peru, among others, these countries became regional leaders, attracting neighboring countries to participate in project activities and providing them with ongoing assistance. In addition, UNCTAD works closely with the African Competition Forum (ACF) by providing facilities for the ACF side lines meetings during the UNCTAD IGE Forum.

In addition, as part of its technical cooperation activities, UNCTAD’s has developed a voluntary peer

The 8th UN Review on Competition and Consumer Protection will review and discuss both competition and consumer protection work for the last 5 years and give guidance to Secretariat for the coming 5 years in both areas.

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Save the DATE!

8th UN Review Conference ON COMPETITION AND CONSUMER PROTECTION
Palais des Nations, Geneva
6–10 July 2020

Teresa Moreira
Head Competition and Consumer Policies Branch, UNCTAD
Like the ACF, peer learning underpins shares its vast storehouse of expertise possible. Conditions of as many jurisdictions as and adaptable to the specific domestic and OECD recommendations and the world, including in Africa ensure with competition authorities around individuals like you and me. Working partners of the OECD. Diversity is non-OECD jurisdictions, including in competition law enforcement, a role to governments to respond to economic threats from international players. In a number of countries, criticisms about the lack of relevance of competition law to the achievement of broader societal goals has fuelled a debate about whether public interest considerations should play a role in competition law enforcement, a perspective that tend currently to be rejected by competition authorities. Competition authorities can best address this growing scepticism of the benefits of competition and ensure that markets work for the good of society by sharing experiences, expertise, and research through fora offered by the ACF and the OECD. Individually, the ACF and the OECD can offer valuable support to African authorities. But by working together, these two complementary organisations can be even more effective. We look forward to hosting the ACF meeting once again in the margins of our next OECD....
On 7 October 2019, Mauritius hosted the ACF cartels workshop in Bagatelle. This workshop looked largely at investigative tools available to competition authorities in the enforcement of cartel provisions. Within the context of cartels, the workshop looked at bid-rigging. The workshop was facilitated by delegates from South Africa, Botswana, Mauritius and Professor Richard Whish.
On 24-26 July 2019, the Gambia Competition and Consumer Protection Commission hosted the ACF Mergers Workshop. The workshop participants had an opportunity to develop the merger investigation planning lessons and skills from previous ACF workshops, with a focus on product and geographic market definition in merger analysis. Participants identified sources of evidence and the development of qualitative and quantitative evidence, based on a mock case. Practical skills sessions were undertaken which included:

- Using an investigation plan and proof chart
- Preparing for and conducting interviews
- The application of the SSNIP test and other economic tools to help define relevant markets

These practical skills were demonstrated by participants as part of the workshop, by illustrating and developing presentations, interaction with fellow participants, learning-by-doing exercises and case studies focused on market definition.


The workshop attracted 35 delegates from across the continent.
COMPETITION CHALLENGES IN AFRICAN CONSTRUCTION MARKETS
A STUDY ACROSS EAST AND SOUTHERN AFRICA

INTRODUCTION

The study into the competition challenges in Africa’s construction markets was conducted under the auspices of the African Competition Forum (ACF), a network of African national and multi-national competition agencies that was established in 2011. The competition agencies from Namibia, Mauritius, South Africa, Swaziland, Malawi and Kenya took part in the study.

WHY CONSTRUCTION?

Construction is a critical sector in economies because it builds and maintains the infrastructure on which almost every other industry depends. The contribution of the sector is significant across the eastern and southern African countries that participated in this study.

Due to the importance of the construction sector to economic growth and its seeming susceptibility to collusion and corruption, the ACF sought to study selected African construction markets with a view to identifying the features of markets which make them susceptible to anti-competitive conduct within their respective construction markets.

LESSONS FROM CONSTRUCTION MARKETS BEYOND AFRICA

Beyond Africa the study drew lessons from The Netherlands, Japan and the United Kingdom. The Dutch construction cartel was discussed at some length because it is a useful test case which shows why the construction industry is prone to cartel conduct and the factors that support and sustain cartel conduct. The same applied to cartels that were uncovered in Japan and in the United Kingdom.

Each of these cartels revealed different modus operandi and varying market features that enabled the establishment of cartels or sustained the existence of the cartels discovered in these markets.

COMPETITION CHALLENGES IDENTIFIED IN THE COUNTRY STUDIES

The African market studies identified the following features which, to varying degrees, may pose competition challenges for the construction markets in which they prevail.

1. Vertical relationships
   - The impact of input markets
   - Vertical integration
2. Horizontal relationships
   - Joint ventures
   - Sub-contracting
   - Cross directorships
   - Conflict of interest
   - Information sharing
3. Market structure
   - Barriers to entry
   - Market concentration
4. Regulation
   - Anti-competitive regulations
   - Standard setting
5. Other competition challenges, namely pricing and concurrent jurisdiction

Due to the importance of the construction sector to economic growth and its seeming susceptibility to collusion and corruption, the ACF sought to study selected African construction markets with a view to identifying the features of markets which make them susceptible to anti-competitive conduct.

Public procurement

Cyclical demand, market concentration, sub-contracting, the formation of joint ventures and frequent opportunities for communication were all cited as factors that enabled the formation and continued existence of the Dutch construction cartel. The African market studies displayed similar characteristics to a large degree and they all recognised the potential for collusion to occur in these conditions.

Variations on the Japanese system of designated suppliers were also present in the African market studies conducted. While the Kenyan market study did not expressly refer to an approved list of designated suppliers, as provided for in Japan, the Kenyan National Construction Authority has segregated construction firms into categories based on the contract value they are allowed to undertake as well as the academic requirements for the owners of the companies. This approach may increase the risk of State sponsored corruption although it is designed to improve quality and reduce costs.

In South Africa the amended CIDB regulations (2013) further provide a ranking framework for construction projects based on both track record and available capital. This criterion
allows different firms to tender for different projects in grades 1 to 9. Therefore, the CIDB rating system regulates the extent to which firms can participate in public sector construction tenders. These regulations bear some resemblance to the Japanese designated supplier system. Although they are aimed at managing the project budget and quality, these regulations may increase the risk of State sponsored corruption as firms clamour to appear on the list of designated service providers, similar to the Japanese example.

Market structure

It is true that high levels of concentration coupled with high barriers to entry make a market conducive to anti-competitive conduct, including collusion. This was also demonstrated in the Netherlands, UK and Japanese examples of collusion within their respective construction industries. In the Netherlands, although there were many firms registered to participate in the construction industry, the classification of firms according to size and specialty meant that only a few firms were eligible to bid for construction works at any given time, thus limiting the market to fewer firms. This small number meant that the cartel was able to facilitate discussions between potential bidders more easily. As previously mentioned, the Japanese system of designated suppliers had a similar impact and also helped to facilitate collusion. The African market studies revealed similar characteristics in their construction industries and all the studies concluded that these features may leave the industries prone to collusion and other forms of anti-competitive conduct.

Regulating construction

The Netherlands, Japanese and UK examples illustrated that regulatory environments could potentially, albeit inadvertently, promote anti-competitive outcomes while targeting efficiencies for the market. In some instances the regulators themselves would flout rules and regulations for nefarious and anti-competitive ends.

There was some support for the idea, for instance, that the Netherlands regulatory environment enabled collusion up until their Competition Act of 1998 was introduced into law. According to a 1999 OECD report the old Competition Act in the Netherlands was based on the so-called “abuse system”. "The Netherlands tolerated so many anti-competitive agreements that the country became known in the 1980’s as a “cartel paradise”". Moreover a 1992 article claimed that 40% of the important cartel cases in EC competition enforcement were Dutch. Regarding the Dutch construction cartel specifically, it was reported that “these cartel offences were encouraged in part by authorities that were extremely accommodating to construction companies.”

Beyond the conduct of the regulators themselves standard setting and procurement procedures were highlighted by all countries as regulatory issues that had the potential to raise significant competition concerns.

A full copy of Competition Challenges in African Construction Markets is available on www.compcom.co.za.

ACF CROSS-COUNTRY STUDY OF THE AIRLINE INDUSTRY

The main objectives of ACF cross-country study of the airline industry is to identify potential competition concerns in the airline industry with a view of ameliorating them, while the specific objectives of this airline study are:

- Mapping the airline industry to appreciate the regional and international dynamics that are of primary relevance to the member country
- Understanding the market structure, alliances, state involvement and regulatory setting for the airline industry in different ACF member countries
- Understanding the market structure, alliances and state involvement and regulatory setting on regional and international services that impact on continental trade and tourism
- Understanding the type of competition concerns that exist in the airline industry in different ACF member countries
- Providing a platform for identifying regional and continental priorities in respect of the airline industry.

This project began encompassing 7 participating competition authorities and 1 regional competition authority who have agreed to provide information for the project representatives for the industry in respect of Angola, Nigeria, Egypt, COMESA, South Africa, Mauritius, Zambia and Kenya and is facilitated largely through workshops.

The research is led by Com-petition Commission South Africa and Competition Authority of Kenya.

The first technical workshop was hosted in Mombasa Kenya by the Competition Authority of Kenya. Another was recently hosted by the Federal Competition & Consumer Protection Commission in Abuja, Nigeria, from 2–3 March 2020. The ACF notes that the Gambia has now joined the group of participants bringing the number up to 9 in total.

To date, all 9 participating competition authorities have submitted draft reports. The final report is expected to be published in June 2020 subject to meeting the following deadlines:

• Cross-country report

• Draft report
The ACF/World Bank Institutional Benchmarking study began in January 2019 and is focused on promoting institutional independence and institutional efficiency. The study collected information by distributing a survey to all ACF members. Following the receipt of responses and validation, 20 ACF members were participating in the study.

A workshop was held in South Africa on 28 August 2019 in order to discuss the findings gleaned from individual countries’ responses to the survey. Attendees of the workshop were from Kenya, South Africa, Botswana, Zimbabwe and Mauritius.

In December 2019, on the side-lines of the OECD Global Forum on Competition, the World Bank presented the final report to the ACF Steering Committee Meeting. The report will be on a road show at various international meetings in 2020. It should be noted that any road shows in 2020 is likely to be affected by the current COVID-19 global pandemic.

The ACF looks forward to the final publication of the report and thank the contributors and drafters from the 9 participating competition authorities across ACF.

<table>
<thead>
<tr>
<th>Deliverables</th>
<th>Deadline</th>
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</thead>
<tbody>
<tr>
<td>Contributors’ biographies</td>
<td>09 March 2020</td>
</tr>
<tr>
<td>Finalise country drafts</td>
<td>26 March 2020</td>
</tr>
<tr>
<td>Overarching chapter</td>
<td>10 April 2020</td>
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<tr>
<td>Submission to ACF Secretariat</td>
<td>26 March 2020</td>
</tr>
<tr>
<td>Submission to publisher</td>
<td>30 March 2020</td>
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<tr>
<td>Layout of the report</td>
<td>13 April 2020</td>
</tr>
<tr>
<td>Draft formatted version</td>
<td>01 May 2020</td>
</tr>
<tr>
<td>Final</td>
<td>June 2020</td>
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**ACF REGIONAL COOPERATION**

Regional cooperation remains an essential tenant of the work of the ACF. This is reflected in the work-streams of the ACF; namely:

- Facilitating integration
- Capacity building
- Advocacy

To this end, ACF members have engaged in numerous staff exchanges, information-sharing, case-based cooperation especially in relation to cross-border conduct and entering bilateral memoranda of understanding (MOU). Below is a list of such memoranda, indicative of the growth of cooperation amongst ACF members.

Although the ACF has 38 members below is a non-exhaustive list of some of the MOUs members have entered and is also indicative of the need for more collaboration and deepened cooperation across ACF and the African continent:

<table>
<thead>
<tr>
<th>Member State</th>
<th>MoU</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Botswana</td>
<td>South Africa, SADC</td>
</tr>
<tr>
<td>2 Egypt</td>
<td>COMESA</td>
</tr>
<tr>
<td>3 Kenya</td>
<td>South Africa, COMESA</td>
</tr>
<tr>
<td>4 Malawi</td>
<td>COMESA, SADC</td>
</tr>
<tr>
<td>5 Mauritius</td>
<td>South Africa, COMESA, Seychelles, SADC</td>
</tr>
<tr>
<td>6 Namibia</td>
<td>South Africa, SADC</td>
</tr>
<tr>
<td>7 Seychelles</td>
<td>South Africa, COMESA, Mauritius, SADC</td>
</tr>
<tr>
<td>8 South Africa</td>
<td>Zimbabwe, Botswana, Mauritius, Seychelles, eSwatini, Namibia, Kenya, SADC</td>
</tr>
<tr>
<td>9 eSwatini</td>
<td>South Africa, COMESA, SADC</td>
</tr>
<tr>
<td>10 Zambia</td>
<td>COMESA, SADC</td>
</tr>
<tr>
<td>11 Zimbabwe</td>
<td>South Africa, SADC</td>
</tr>
</tbody>
</table>

**LIST OF MEMBERS / LISTE DES MEMBRES AFRICAN COMPETITION FORUM (ACF)**

**NATIONAL COMPETITION AUTHORITIES AND RELEVANT GOVERNMENT DEPARTMENTS: ACF MEMBERS**

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**BURKINA FASO**
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*COUNTRIES THAT DO NOT USE ENGLISH AS THEIR MEDIUM LANGUAGE OR WHERE THERE IS NO COMPETITION AUTHORITY WEBSITE

NUMBER COUNTRY
1 Angola
2 Benin
3 Burkina Faso
4 Burundi
5 Cameroon
6 Congo Brazzaville
7 Cote d’Ivoire
8 Ethiopia
9 Gabon
10 Guinea
11 Mali
12 Mozambique
13 Senegal*
14 Togo
15 Tunisia*