COMPETITION AND CONSUMER PROTECTION COMMISSION

To protect and enhance competition and consumer welfare in the economy for the benefit of Zambia

THE ROLE OF INDUSTRIAL POLICY AND COMPETITION IN REGIONAL INTEGRATION – THE CASE OF COMESA

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Content

LIST OF ACRONYMS

ACIS	Advanced Cargo Information System
ASYCUDA	Automated System for Customs Data
CAZ	Cotton Association of Zambia
CBC	COMESA Business Council
CBTA	Cross-border Traders Association
CCC	COMESA Competition Commission
CCM	Competition Commission of Mauritius
CCPC	Competition and Consumer Protection Commission
CID	Committee of Initial Determination
COMESA	Common Market for Eastern and Southern Africa
CSO	Central Statistical Office
DRC	Democratic Republic of Congo
EAC	East African Community
EDF	European Development Fund
EU	European Union
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
LSPs	Local Sourcing for Partnerships
MSMEs	Micro, Small and Medium Enterprises
OECD	Organisation for Economic Cooperation and Development
OSBP	One Stop Border Posts
PIU	Project Implementation Unit
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission for Africa
UNIDO	United Nations Industrial Development Organisation
REC	Regional Economic Community
RICB	Regional Integration Capacity Building
RISM	Regional Integration Support Mechanism

RSA	Republic of South Africa
SACU	Southern Africa Customs Union
SADC	Southern Africa Development Community
SMEs	Small and Medium Enterprises
TIDs	Trade Information Desks
ZABS	Zambia Bureau of Standards
ZWMA	Zambia Weights and Measures Agency

Introduction

Regional integration is a process in which states enter into a regional agreement in order to enhance regional cooperation through regional institutions and rules.[1] Regional integration can also be seen to be an association of states based upon location in a given geographical area, for the safeguarding or promotion of the participants, or an association whose terms are fixed by a treaty or other arrangements.[2]

Countries choose to belong to a regional economic community (REC) in order to derive benefits that go with it through collaborative actions and regional approaches which are critical to achieving their development goals. The benefits from pursuing regional integration are myriad, including: i) reaping economies of scale or other efficiencies by acting collectively in the pursuit of common objectives to increase local supply capacity and improve access to markets; ii) integrated or harmonized treatment of trans-boundary issues such as trade, regulatory frameworks and policies, regional infrastructure and other cross border issues; and iii) management of shared natural resources. These solutions are particularly relevant for the many African countries that have small economies, small populations or are land-locked.

In order to achieve the goals of regional integration, certain policies such as the industrial and competition policies are key. Further, these policies of Member States should be harmonized in order to achieve the intended benefits. While the benefits of regional integration are important for the Member States, to implement it requires political will from all the Member States.

The Common Market for Eastern and Southern Africa (COMESA) is one such a REC. COMESA has 19 Member States including Burundi, Comoros, Democratic Republic of Congo (DRC), Djibuti, Egypt, Eritrea, Ethiopia, Kenya, Lybia, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan,

[1] Development Policy in Africa: Mastering the Future, 2014

[2] An Evaluation of the Communication Strategies Used By The COMESA Public Relations Unit To Disseminate Information About the Comesa Customs Union to Cross Border Traders in Selected Comesa Member States, 2012

Swaziland, Uganda, Zambia and Zimbabwe, with booming regional trade (formal intra-COMESA trade in goods reached US$19.3 billion in 2012, up from US$3.1 in 2000). With a population of 458 million, a combined GDP of US$572 billion, and land mass of 10.9 million square kilometres, COMESA is the largest REC in Africa.[3]

COMESA is established by a treaty called the Treaty establishing the COMESA. COMESA was born in 1994 and Article 3 of the COMESA Treaty, gives the reason for COMESA's existence, which is to improve the living standards of the people in the region.[4]

To achieve this, COMESA is using among other tools both the industrial and competition policies as tools to enable it achieve its objectives.

This paper seeks to show how industrial and competition policy have interacted in COMESA in order to attempt to show the benefits of regional integration. The paper makes reference to Article 55 of the COMESA Treaty which affirms competition policy in COMESA. In addition, the paper also makes reference to Article 100 on industrial policy in COMESA. It also looks at challenges and makes recommendations on how industrial and competition policy can enhance regional integration.

Historical Perspective of Regional Integration

Regional integration initiatives in Africa date back as far as 1910 with the establishment of the South African Customs Union (SACU) and the East African Community (EAC) in 1919. In 1967 the Association of Southeast Asian Nations (ASEAN) was also born which include Indonesia, Malaysia, the Philippines, Singapore and Thailand.[5] Since then, a number of regional economic communities have been formed across the continent, particularly, since the 1970s. Currently, there are about 10 or more regional economic groupings in Africa, with each country belonging to at least one regional grouping.

[3] Common Market for Eastern and Southern Africa, 2014, *Key Issues in Regional Integration, Volume III, pg 3*
[4] Common Market for Eastern and Southern Africa Treaty, 1994, Lusaka
[5] http://www.asean.org/asean/about-asean/history/

However, it has been observed that these RECs have not satisfactorily managed to achieve their objectives.[6] In addition, it has been observed that the intra-Africa trade is small compared to what should be expected. Various reasons are suggested as causes for the lack of progress in regional integration efforts in Africa. Chief among these reasons, are unwillingness of governments to:(i) surrender sovereignty of macroeconomic policy making to a regional authority; (ii) face potential consumption costs that may arise by importing from a high cost member country; (iii) accept unequal distribution of gains and losses that may follow an integration agreement, and (iv) discontinue existing economic ties with non-members.[7] In addition "lack of a strong and sustained political commitment and macroeconomic instability", among others, have hindered the progress of economic integration in Africa.[8]

Despite the unsatisfactory performance to date, however, there seems to be a new momentum to invigorate the process of integration of African economies. This is reflected in the resurgence of political will expressed in the Abuja Treaty of 1991. Among others, first, formation and the strengthening of various regional blocks outside of Africa (in Europe, Asia and the Americas) seems to have forced African countries to reconsider the issue more seriously if they are to avoid further marginalization. Second, the realisation by African countries (particularly the small ones) that their respective national markets are too small to provide the benefits of economies of scale and specialization. Third, the liberalization initiatives undertaken by almost all countries in Africa (mainly sponsored by the Bretton Woods institutions) has also created a conducive environment to pursue an outward-looking economic policy, which encompasses economic cooperation in general and trade liberalization policy in particular.

Resulting from the horror and devastation of the Second World War of 1939-1945, and in order to make war unthinkable, to reconstruct Europe, to ensure

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[6] Regional Integration in Africa, A Review of Outstanding Issues and Mechanisms to Monitor Future Progress, UNECA

[7] Ibid

[8] Ibid

peace and prosperity, Europe adopted economic integration as the overarching strategy for building the future of Europe. Europe was to pursue ever closer integration of its peoples, economies and countries. It became a customs union in 1968 and a single market in 1992. It is now the European Union (EU). This deeper integration has been pursued to achieve the development and security objectives prioritised consistently over the years. The one most important achievement of the European integration project has been a full generation of peace and prosperity; and the moral of the story has been that deeper integration assists to make war unthinkable and to promote prosperity for the people, and of course that like anything else in life, there will be challenges along the way to be overcome.

Therefore, according to the objectives and binding undertakings as well as the programmes being implemented by COMESA's, its aim of deeper integration from a free trade area, to a common market, as well as economic union, involving integration through harmonisaton and coordination of policies in the various sectoral areas, progressively leading to a payments union as a basis for the eventual establishment of a monetary union is attainable, with EU as its model, which has already walked this path.

Industrial Policy

Industrial policy can be defined as "a nation's declared, official, total strategic effort to influence sectoral development."[9] These are policies that stimulate specific activities and promote structural change, e.g. trade and fiscal policy. Industrial policy requires concerted private-public action through government policies consistent with private initiative.[10]

UNCTAD (1998) implies that industrial policy consists of government measures applied to sectors or industries in order to advantage them. Industrial policy is also looked at as policy instruments which target selected industries, directing resources in those industries to accord producers a

[9] http://definitions.uslegal.com/i/industrial-policy/

[10] YU Tongshen School of Economics, Renmin University of China Oct, 2010 *Pursuing keeping the Balance between the Industrial Policy.* Addis Ababa, Ethiopia

"competitive advantage."[11] Such privileges would not be available in the absence of industrial policy. Advantages are conferred through industrial policy for the purpose of overcoming market failure and promoting structural change that is the transfer of resources from traditional activities to new goods and services using new technologies. The main objective is to anticipate structural change, facilitated by removing obstacles and correcting for market failures. The results of good industrial policy include among others: maintaining a sustained growth in productivity; enhancing gainful employment; attaining international competitiveness; and transforming the country into a major partner and player in the global arena.

Industrialisation is the driving force in the development process. The key strategies for developing a strong, balanced and competitive industrial sector in COMESA are the following: promotion of industrial co-operation so as facilitate technology transfer and exploitation of complementarities based on the principles of market sharing and resource pooling; capacity building in entrepreneurial, business management and other technical skills targeted at micro, small and medium enterprises (MSMEs); policy reform aimed at supporting MSMEs and providing a more level playing field; implementing programmes that promote industrial balance as a way of narrowing disparities in industrial development.

Governments are using entrepreneurship is at the centre stage of the growth of their industries. Industrial policy include innovation among market players. In order for the manufacturing sector to grow, it needs government support. Government has come up with favourable policies that supports growth. These policies should ensure access to finance, access to new technology for efficient production of various products, improved packaging in order to have products to be exported. In order for each country to export to each other, there is need to be at the same level. Hence such programmes as the Regional Integration Support Mechanism (RISM). The policy deals with production of products that can be traded across borders, produced

[11] UNCTAD, 2009, The Relationship between competition and industrial policies in promoting economic development

efficiently. Therefore, Governments should grow a seedbed of Micro-Small Medium Enterprises (MSMEs) in all industrial sectors of the economy aimed to be future corporations of the country. If well nurtured, theses may turn into national champions that should contribute to growth and development of the country. The support by government especially to the private sector could be realised through financial support to allow the players to access new technologies that would enable them produce products efficiently and achieve the needed quality acceptable by trading partners.

Another important point to consider is that government ought to develop conformity standards that should eventually be harmonized with its trading partners. This in the medium to long terms would likely drive intra-trade between the Member States of the trading bloc. In Zambia for instance, the Zambia Bureau of Standards is the institution tasked to develop standards. There is also need for governments to deliberately improve skills and technical know-how among the local manufacturers to be able to produce quality products. Zambia, like many countries in COMESA has benefited from being a Member of this REC through the Regional Integration Capacity Building (RICB) project, which has been prepared within the framework of the Regional Integration Support Mechanism (RISM), a project funded by the European Union (EU) under the 9th European Development Fund (EDF) The specific objective of RISM is to support Member Countries to participate more fully in the COMESA, EAC and SADC Tripartite free trade areas with minimum disruption to public expenditure commitments as well as enabling them implement economic reform programmes in the context of regional integration. The beneficiaries of the project are government ministries, Government agencies, private Sector and civil society organisations.

According to the Regional Integration Capacity Building (RICB) project in Lusaka, Zambia, over the past three (3) months that the action has been implemented, mile stones that have been achieved include: setting up and operationalization of the project implementation unit (PIU), the development, launch and unpacking of the Zambia Leather Value Chain strategy, initiation of processes towards formulations of the trade and investment policies;

successful hosting of the Indaba on Economic Partnership Agreement (EPA). Capacity building to Central Statistics Office (CSO) in CountryStat and Environmental statistical programmes. Over thirty (30) judges and magistrates trained in competition regulation through the Competition Consumer Protection Commission (CCPC); trade facilitation mission to Ethiopia for women SMEs under the Cotton Association of Zambia (CAZ); progress towards drafting a schedule of services commitments in three sectors of energy, construction and business; initiation of the equipment procurement processes of Mobile Prover and Mobile Testing Laboratory for ZWMA and ZABS, respectively; commencement of capacity building activities towards trade Information Desks (TIDs) under the Cross Border Traders' Association (CBTA).[12]

Article 99 of the COMESA Treaty[13] (Scope of Cooperation in Industrial Development) addresses the objectives of co-operation in industrial development which are to: promote self-sustained and balanced growth; increase the availability of industrial goods and services for intra-Common Market trade; improve the competitiveness of the industrial sector; and develop industrialists that would acquire ownership and management of the industries. Article 100 of the COMESA Treaty[14] addresses the strategy to be followed by COMESA to implement the COMESA Industrial Policy.

COMESA has drafted a policy on industrialisation, which will act as a tool to guide the region towards self-sustained balanced growth and improve competitiveness of the industrial sector in the 19 Member bloc. The draft COMESA industrialisation policy was presented and discussed during the 34th Meeting of the International Governmental Committee in Addis Ababa in Ethiopia in 2015. The rationale for the COMESA Industrial Policy lies in the need to reverse the trend of jobless growth and to transform the regional economy through industrialisation within the context of deepening globalisation and regional integration and enhancing south-south

[12] RICB project, 2014
[13] Comesa Treaty
[14] Ibid

cooperation while taking advantage of the new markets within COMESA itself. The gains of industrialisaton are seen in increased cross-border trade.

Intra-trade in the COMESA region is seen to be low as shown in figure 1below.

Fig 1 below shows Intra-COMESA Trade (2012) Values in million US$[15]

Rank	**Exporter**	**Value**	**% Share**	**Importer**	**Value**	**% Share**
1	Egypt	2,480	26.8	Zambia	1,872	18.6
2	Kenya	1,871	20.2	Libya	1,587	15.8
3	Zambia	1,587	17.1	Congo DR	1,348	13.4
4	Congo DR	1,209	13.1	Egypt	781	7.8
5	Uganda	493	5.3	Kenya	726	7.2
6	Rwanda	306	3.3	Uganda	714	7.1
7	Sudan	276	3.0	Zimbabwe	641	6.4
8	Ethiopia	264	2.8	Sudan	582	5.8
9	Mauritius	207	2.2	Malawi	428	4.3
10	Malawi	169	1.8	Rwanda	421	4.2
11	Libya	127	1.4	Ethiopia	236	2.3

[15] Common Market for Eastern and Southern Africa, Key Issues in Regional Integration, Volume III, pg 72

12	Zimbabwe	121	1.3	Burundi	157	1.6
13	Swaziland	45	0.5	Mauritius	149	1.5
14	Madagascar	41	0.4	Madagascar	146	1.5
15	Burundi	40	0.4	Djibouti	99	1.0
16	Djibouti	15	0.2	Eritrea	92	0.9
17	Eritrea	7	0.1	Seychelles	45	0.4
18	Seychelles	5	0.1	Comoros	33	0.3
19	Comoros	1	0.0	Swaziland	5	0.1
	Total	**9, 263**	**100**		**10, 063**	**100**

Source: COMSTAT Database

Figure 1 above, shows that Egypt had the biggest market share of 27% for intra-COMESA exports, followed by Kenya, Zambia and Congo DR with shares of 20%, 17% and 13 % respectively. On the import side, Zambia registered the biggest market share of 19% in 2012; followed by Libya with 15.8%; Congo DR and Egypt were ranked third and fourth with share of 13.4% and 7.8% respectively.[16] Figure 1 above also shows that intra-COMESA exports stood at US$9.3 billion and imports at 10.1 billion, indicating that intra-COMESA trade in 2012 was only 7% of the region's total trade, as shown in figure 2 below:

[16] Ibid pg, pg 72

COMESA Trade with Third Countries (2012) Values in millions US$

Country	**Exports (US$ millions)**	**Imports (US$ millions)**	**Exports without matching imports in COMESA (US$)**
Burundi	204	641	5,528
Comoros	44	103	
Congo DR	4,841	3,477	45,188
Djibouti	20	2,060	
Egypt	26,779	63,501	884,713,033
Eritrea	430	217	19,604
Ethiopia	1,689	11,640	
Kenya	5,412	15,660	44,909,197
Libya	34,783	9,638	
Madagascar	1,196	2,340	104,906,197
Malawi	1,065	2,430	136,389,516
Mauritius	1,874	4,967	
Rwanda	203	1,233	269,275

Seychelles	654	952	
Sudan	3,092	5,608	15,484,923
Swaziland	1,903	1,635	3,530908
Uganda	2,214	5,374	787,687
Zambia	8,057	6,946	140,056,073
Zimbabwe	3,836	6,102	282,512,314
Total	**98,296**	**144,544**	**1,613,629,254**

Source: Authors calculations from COMSTAT database

Figure 2 above shows that the COMESA region has huge potential for increasing intra-COMESA trade. The potential is estimated at US$96.7 billion. This can be achieved if all the total COMESA exports from third countries, less COMESA imports from third countries which does not match with any Member States' exports (98,286 -1, 613) can be traded among the Member States; because imports of similar products by Member States exceed total exports on average by US$47.90 billion.[17]

There is therefore, need to address the key reasons why Members States in COMESA are not importing or exporting among to/from COMESA and these include removal of non-physical transport barriers along major transit corridors, especially those connected to landlocked countries to sea ports; creation of One Stop Border Posts (OSBPs) and enforcement of adherence by Members States to protocols covering the area of transport and measures already adopted to facilitated transport and transit between Member States

[17] Ibid, pg73

such as: harmonized axle load limits, the harmonized road transit charges, Customs Bond Guarantee, the COMESA Customs Declaration, the Advanced Cargo Information System (ACIS), Automated System for Customs Data (ASYCUDA) and inter-railway working agreement between railway companies.[18] Once these customs and transport issues are effectively address, there will be ease access to markets thereby increasing trade among COMESA Members.

The Zambian draft industrial policy states that the policy will be in line and in conformity with regional policies such as the COMESA and SADC industrial policies.[19] For Zambia to transform into a producer of competitive value added products for both the domestic and export markets, Government shall create an enabling and conducive environment for the private sector to lead the Industrial transformation of the country. As such, the Zambia's national Industrial Policy shall facilitate the following: stimulate and encourage value addition activities on primary commodities as a means of increasing national export earnings and create employment opportunities; transform the Zambian economy into a diversified and competitive economy which is well integrated into the international trading system; Stimulate investment flows into export – oriented sectors in which Zambia has comparative and competitive advantages as a means to promote innovation and technology transfer in the national economy; Support the effective development and utilisation of domestic productive capacities as a means to increasing output and expanding employment opportunities; Facilitate the acquisition of modern technology to support value addition and industrial processes by domestic firms; Facilitate public and private investments in infrastructure to support improvements in the quality and standards of Zambian products; and Stimulate innovation and invention of new products through industrial research and development and protection of intellectual property.

[18] Ibid pg 83

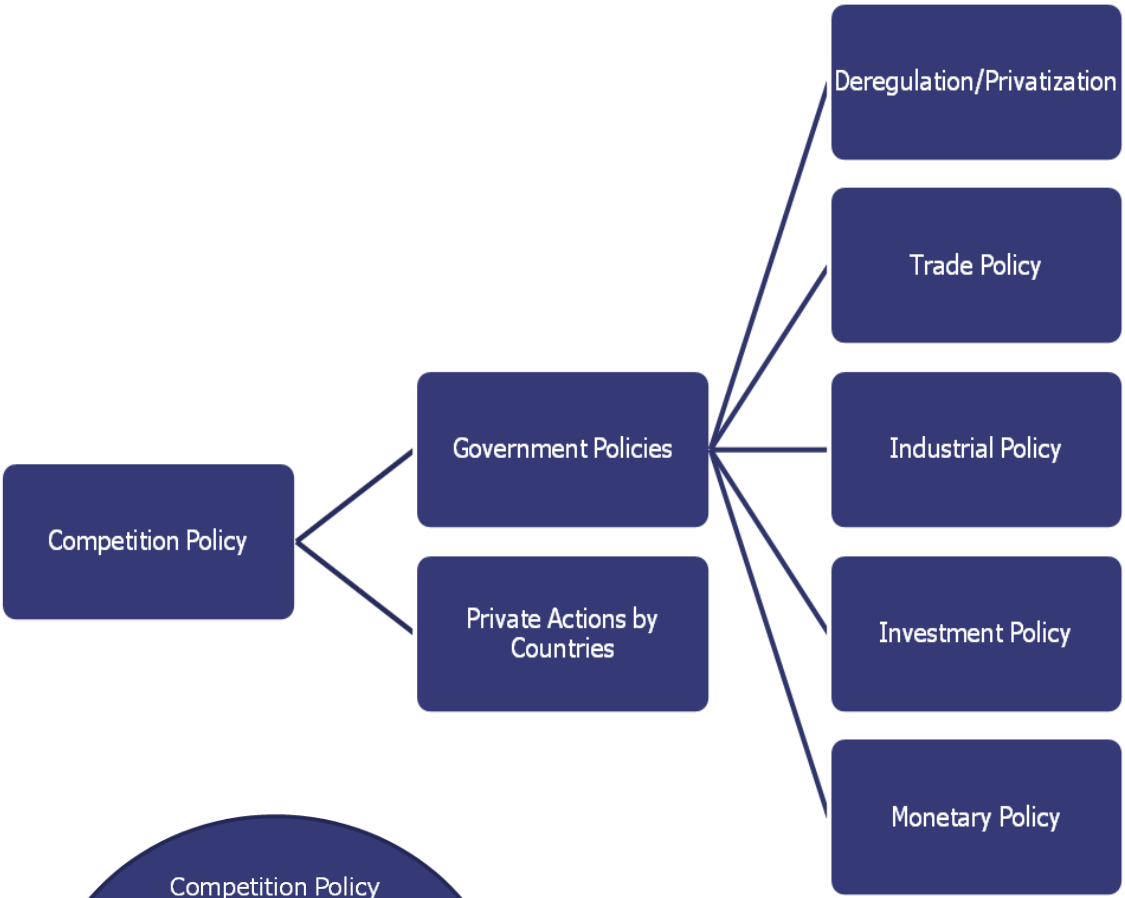
[19] Draft National Industrial Policy

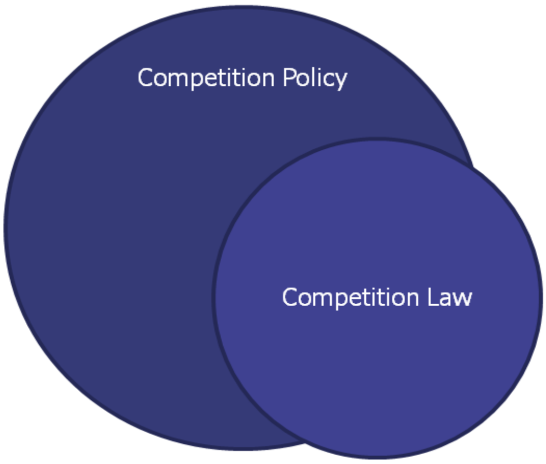
The Zambian National industrial policy is clearly in tandem with the COMESA industrial policy as can be seen above. As such Zambia has benefited from the COMESA tool kit. On 25th January, 2016 for instance, COMESA Business Council (CBC) Local Sourcing for Partnerships (LSPs) Training workshop for 80 food suppliers on quality standards and food safety in Lusaka, participants were told that it was imperative to put in place business models that look at increasing sustainable partnerships with companies that can input in supply chains of larger enterprises. The workshop was the first phase of the one-year project to improve the quality and standards of food suppliers and other value chain actors in the hospitality, food and beverages industries, among other sectors. As a strategic response, the LSP project aimed to increase local sourcing by large corporate companies in the COMESA region from small growth enterprises within the hospitality and agro-industry sectors, focusing mainly on food and beverages. The project is being piloted in six COMESA states, namely, Zambia, Ethiopia, Kenya, Malawi, Rwanda and Uganda. In Zamba, the Zambia Association of Manufacturers is the implementing partner for the project.

It is clear that whilst the COMESA industrial policy strategy seeks to build entrepreneurial, business management and other technical skills targeted at micro, small and medium enterprises (MSMEs); it has been observed that the Zambian National policy is in tandem with the COMESA one as can be seen from the National policy which has made it possible for such training programmes as for the CBC stated above. It can therefore, be deducted that the harmonization of the national policy with the regional policy is taking effect and hence a step in the right direction.

Competition Policy

Competition refers to rivalry among firms in the market place. It also extends to envisaged or potential rivalry. Competition policy refers to government policy to preserve or promote competition among market players and to promote other government policies and processes that enable a competitive environment to develop.[20] These policies include such policies as deregulation, privatisation, trade policy, industrial policy, investment policy and monetary policy. They create an enabling environment for businesses to flourish. However, competition law is important legislation needed to ensure competition policy is implemented.





"Competition Law is a subset of Competition Policy"

[20]Unctad:, 2009, *Empirical evidence of the benefits from applying competition law and policy principles to economic development in order to attain greater efficiency in international trade and development*. (TD/B/COM.2/EM/10/REV.1):5.

Competition advocacy is also an important element of competition policy as it is a tool used to raise awareness of the law among stakeholders. Competition advocacy helps with easy enforcement of competition law due to wide knowledge and acceptance of the law. Competition law contains rules to restrict anti-competitive market conduct, as well as an enforcement mechanism, such as an authority. Competition law targets anti-competitive practices by private or public undertakings or enterprises. Other policies which significantly affect competition include among others, consumer protection, standards, intellectual property rights, international trade, investment and licensing. Competition laws generally contain both core competition objectives and other objectives that vary among jurisdiction and over time. Core competition objectives in many jurisdictions include "to maintain and encourage the process of competition in order to promote efficient use of resources while protection the freedom of economic action of various market participants."[21] The United Nations Set emphasizes the competition policy goal of promoting economic development and many developing countries view competition as having this role.[22] In this context competition is an inter-mediate objective and economic development is a final goal.[23] Other relatively common objectives are the promotion of small and medium-sized enterprises (SMEs), restricition of undue concentration of economic power and ensuring fair competition, public interest objectives – which may be relevant to industrial policy – are fairly wide spread among developing countries, but also present in some developed countries' competition laws, particularly with respect to mergers.

The UNCTAD Model Law (2004) spells out the objective of a completion law to "control or eliminate restrictive agreements or arrangements among enterprises, or mergers and acquisitions or abuse of dominant positions or market power, which limit access to markets or otherwise unduly restrain

[21]OECD "The objectives of competition law and policy" (CCNM/GF/COMP(2003)3)
[22]Unctad , 2009, "The Relationship between competition and industrial policy in promoting economic development
[23]WTO Study WT/WGTCP/W/228, 1998

competition, adversely affecting domestic or international trade or economic development.

The main objective of competition policy at regional level is to safeguard regional markets against anti-competitive cross-border trade. These may be in the form of abuse of dominance, such as price discrimination; merger control and cross-border cartels such as multinational corporations who may want to cooperate instead of competing, with presence in more than one country in the region. Such multinationals can include Illovo, Lafarge, who have presence in Zambia, Malawi and Burundi. The thrust of competition law in regional markets is to prevent underhand methods to prevail so as to create, support and also preserve fair competition between competitors in the regional market.

In COMESA, Article 55 of the Treaty affirms competition policy in COMESA. Specifically Section 55 states that:

1. "*The Member States agree that any practice which negates the objective of free and liberalised trade shall be prohibited. To this end, the Member States agree to prohibit any agreement between undertakings or concerted practice which has as its objective or effect the prevention, restriction or distortion of competition within the Common Market."*

2. *The Council may declare the provisions of paragraph 1 of this Article inapplicable in the caseof:*

(a) any agreement or category thereof between undertakings;

(b) any decision by association of undertakings;

(c) any concerted practice or category thereof;

which improves production or distribution of goods or promotes technical or economic progress andhas the effect of enabling consumers a fair share of the benefits:Provided that the agreement, decision or practice does not impose on the undertakingrestrictions inconsistent with the attainment of the objectives of this Treaty or has the effect ofeliminating competition."

3. *"The Council shall make regulations to regulate competition within the Member States."*[24]

As The COMESA Competition Regulations and the COMESA Competition Commission provides a regulatory and institutional framework that promotes and encourages competition by preventing restrictive business practices and other restrictions that deter the efficient operation of markets, thereby enhancing the welfare of the consumers in the Common Market, and protecting consumers against offensive conduct by market actors.

The COMESA Competition Commission (CCC) was formed in December, 2004 as a supra national competition authority aimed at regulating competition matters involving two or more Member States. The CCC started operating in 2013. Member States which have Competition authorities include: Egypt, Burundi, Rwanda, Malawi, Ethiopia, Zimbabwe, Kenya, Zambia, Swaziland, Mauritius, Seychelles and Uganda.

The Kenyan, Malawian and Zambian competition laws are similar as they take into account similar elements of competition law which include control of mergers and acquisitions, prohibition or restrictive business practices such as cartels and vertical conducts. These laws are clearly consistent with the COMESA law on competition which have similar tenates. Both the national laws and the international law aim at enhancing consumer welfare.

The CCC has handled many cases since its inception. One of the land mark cases that was determined by the CCC was the proposed merger between Holcim Limited and Lafarge S.A.

Case Study[25]

[24] COMESA Rules and Regulations

[25] COMESA Competition Commission case file no. CCC/MER/6/20/2014

Information and Relevant Background: On 8th July, 2014, the CCC received a notification for approval of a merger between Holcim Limited ("Holcim") and Lafarge S.A. ("Lafarge"). The transaction was notified under Article 24(1) of the COMESA Competition Regulations ("the Regulations"). Under this provision, the Commission is required to assess whether the proposed transaction between the parties would, or is likely to have the effect of substantial preventing or lessening competition; or would, or is contrary to public interest in the Common Market pursuant to Article 26 of the Regulations. The Committee of Initial Determination hereinafter referred to as "(he CID") noted that the parties operate in two or more COMESA Member States. This, therefore, means that the regional dimension requirements under Article 23(3) and 23(5) are satisfied and asserts jurisdiction of the Comission to assess the transaction. The parties to the transaction are currently active in the following Member States: Djibouti, Egypt, Eritrea, Libya, Kenya, Madagascar, Mauritius, Rwanda, Seychelles, Uganda, Zambia and Zimbabwe.

The Transaction: It was submitted that parties proposed transaction was a merger between equals in terms of which Holcim would offer new Holcim shares to the shareholders of Lafarge in a public exchange offer governed by French Law. The public exchanged offer would be initiated by Holcim with an exchange ratio of one Holcim share for one Lafarge share. This public exchange offer was subject to the approval of a Holcim Extraordinary General Meeting to issue the new Holcim shares which required two-third majority of shareholders in attendance. The public offer would be subject to Holcim holding at least two-thirds of the share capital and voting rights of Lafarge on a fully diluted basis. It was further submitted that the proposed transaction was likely to result in Holcim acquiring the majority of Lafarge's issued share capital. Holcim would be renamed LafargeHolcim, and would be listed in Zurich and Paris and would not be controlled by any shareholders.

Competition Analysis: The CID established that the transaction would not frustrate the single market objective of the Treaty in that it does not have an appreciable effect on trade and between Member States.

Determination

The CID noted that the CCM had requested for a referral from the Commission under Article 24(8) of the Regulations. In this regard, the CID endorsed the decision of the Secretariat to refer part of the transaction relating to the Mauritian market to the CCM. It also determined that the merger does not raise competition concerns and is compatible with the Treaty Establishing the Common Market. It therefore, approves the transaction in the Common Market except for Mauritius. Further, whereas the CID approves the transaction, it expressed concerns regarding the structure of the current market in Madagascar. The decision is adopted in application of Article 26 of the COMESA Competition Regulations.

From the above-cited case, the merger much as it was authorised by the CCC, since it did not raise competition concerns in COMESA, it was not authorised by in Mauritius, given the fact that the transaction had raised significant competition concerns in Mauritius. Hence Mauritius was allowed to investigate as provided for under Article 24(8) of the COMESA Rules and

Regulations and made its own determination. This shows that the national laws of Member States are in harmony with the regional competition policy.

Challenges

However, there are some challenges being faced in the implementation of regional integration. The overarching legal reason is that the COMESA Treaty is not domesticated by the Member States. There should be domestic laws to that effect, through policy instruments and action plans that operationalize the COMESA obligations within the domestic legal, economic and political systems. The other challenge is lack of awareness of the law binding Member States to the objectives of the Treaty. This is mainly due to lack of awareness from stakeholders such as lawyers. The fear of loss of sovereignty is also a reason of resistance to the objectives of the Treaty. Lastly, poor culture of compliance levels by Member States is also seen as a challenge in the implementation of COMESA Treaty with regards to policy and competition.

Conclusion

Indeed industrial and competition policies are necessary tools for the enhancement of regional integration as seen by their application under the COMESA REC. However, in order to achieve the benefits of regional integration, there is need for Member States to adopt the common industrial policy. As such, both industrial and competition policies are cornestones to achieving regional integration among other factors.

Recommendations

1. COMESA Member states should develop means to attract the labour intensive industries by among other granting appropriate incentives to those industries.

2. There is need of cordinated national, regional and continental efforts to promote value chains at all levels, creation of new and strengthening existing institutions at both national and regional level that will spearhead success in the implementation of the industrial policy.

3. An individual national industrial policy and planning tool is required to prompt governments to ensure that regional integration is fully factored into all planning, budgeting and implementation or operational processes at the national level, covering public and private sector stakeholders.

4. Further, there is need for the COMESA Competition Commission and national competition authorities to engage in serious advocacy with stakeholders in order to educate them on the benefits of competition policy.

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