

**Intergovernmental Group of Experts on Competition Law
and Policy, Fourteenth Session**

Geneva, 8-10 July 2014

Roundtable on:

The Benefit of Competition Policy for Consumers

Contribution

by

African Competition Forum

The views expressed are those of the author and do not necessarily reflect the views of
UNCTAD

My intervention will be grounded on the context and realities of developing countries specifically.

I will start with a paradox! The paradox is - in most, if not all African countries, you have a situation where people are paid third world wages but have to contend with first world prices in their markets!

All this to say that if there is one place where consumer protection matters (through effective competition regimes), it is in developing countries. And in a context of extreme poverty, the relevance of competition law to protect consumers from over-exploitation and harm cannot be over emphasized!

“The economic case for competition in Africa is very strong. Anti-competitive practices are rampant and the people who need their income protected the most through vigorous competition enforcement are the poor”.

Let us also remember that one of the objectives of competition policy and law is consumer welfare. African countries have poverty reduction objectives as enshrined in the hitherto PRSPs, the MDGs and soon the SDGs. And within the framework of the African Peer Review Mechanism, there are provisions for economic and corporate governance of which CPL should be a key plank.

A competition authority's mission is to make markets work well for consumers. No doubt, CPL is very relevant for developing countries. Today as a result of competition:

- Telephone services are cheaper, more efficient and of a better quality
- With effective competition regimes, the retail system will be able to offer cheaper food. CPL has an impact on: the price of transportation; the cost of medicines, the cost of agricultural inputs, public procurement etc, all of which interest the poor.

The points that resonated from what I have heard this morning from the different presenters are:

- The interface between competition law, consumer protection and regulation generally and how they could work/should work together to deliver social and economic value to consumers.
- Policies are as good as the manner in which they are implemented
- The need for coordination, policy coherence and informed consumers
- That consumer empowerment is key instead of over – protection which might have some negative unintended consequences

Interrogating the framework

Of course, we can interrogate the adequacy of consumer protection and whether or not there are effective institutional and support systems for them to play that role

Challenges to implementing CPL and consumer policies:

- Lack of effective/complementary policies; ineffective, poorly resourced institutions;
- No clear distinction between the political and business elite, hence all the governance problems that we see.
- Difficulty to separate the interest of the public at large and the interest of special groups
- Severe budgetary limitations
- Competition Authorities often maintained under the authority of line ministries – and therefore without any real independence

Political Economy Constraints:

- There is a constant tension between **public interest concerns** and issues of **vested interest**/conflict of interest
- Business interest and politics are inextricably linked; those who take the decisions and make the policies are the same people who have their hands/connections in the big businesses. That is creating distortions in the economy
- Informed consumers will welcome competition law, but existing business entities will see it as a threat

We know that anti-competitive conduct has social costs. Consider the case of public procurement going wrong.

And that being the case, competition enforcement will therefore leads to consumer welfare

Competition Enforcement:

We know that a robust competition law will prevent practices that distort competition, either directly or indirectly and will ensure that businesses enjoy the maximum benefits.

It is not the existence of the law and the agency that matters but the effective enforcement of the law by the agency

Indicators of consumer welfare: lower prices, better quality, more choice, easy access

When there is a downward pressure on price as a result of competition, consumer surplus is generated; consumers will make savings that they could use to buy other things – that way consumer welfare will be enhanced

Consumers in developing countries are disorganized and many of them are ignorant about market realities (information asymmetries)

Regulatory capture:

We have to be mindful of regulatory capture. When we say we are promoting national champions and that translates into trade barriers making the cost of foodstuffs in local markets very expensive – whose interest are we defending, the local business elite or the majority of the people who are poor? How should competition law and consumer protection objectives deal with such tensions?

What is the Ideal Framework?

If we depart from the premise that CPL and Consumer Protection have common objective, that would tend to support the need to have an integrated approach – integrating consumer protection and consumer policy

Since both policies need to be applied together, for coordination and synergistic effects, a single enforcement body in my view, has many advantages, particularly in small economies. No wonder, hybrid laws and hybrid agencies are emerging – Ethiopia, The Gambia, Tanzania, Zambia, Zimbabwe.

Factors to determine frameworks

The **country size and resources** are sometimes used as the basis for choosing a framework.

- **For small economies**, it is normally recommended that **hybrid laws and agencies** are more appropriate
- Hybrid laws and agencies also **save resources**, and are also recommended for poor countries
- Most competition authorities **lack the technical knowledge** regarding the implementation of consumer laws
- **Multiple agencies** can give rise to conflicts, influenced by **vested interest groups**
- Establishing one comprehensive law to cover both competition and consumer issues is not an easy task- critical provisions in one or both may be left out.

- **Enactment might be easier compared to enforcement-** having one regulatory authority in charge of two policies implying a multiplication of the implementation gaps for the two laws.
- **But what if the line ministries are different?** e.g while competition authorities are largely hosted by the Ministry of Industry, consumer protection authorities may fall under the Ministry of social welfare/affairs.