

VOLUNTARY PEER REVIEW OF COMPETITION LAW AND POLICY IN SEYCHELLES



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Presentation By
Alexander J. Kububa

SOCIO-ECONOMIC BACKGROUND



- ❧ The Seychelles consists of an archipelago of about 115 islands in the Indian Ocean, northeast of the island of Madagascar off the coast of the African continent:
- ❧ It is a member of two important regional economic groupings:
 - ❧ the Common Market for Eastern and Southern Africa (COMESA); and
 - ❧ the Southern African Development Community (SADC).
- ❧ Like most other developing countries, Seychelles embarked or moved towards a market-based economy:
 - ❧ in doing so, it recognised competition as a central principle to its economic reform.

COMPETITION AND CONSUMER PROTECTION LAW AND POLICY DEVELOPMENT (1)



- ❧ Seychelles' competition law enshrined in the *Fair Competition Act, 2009*:
 - ❧ Act assented to by the President in October 2009 to come into force in April 2010;
 - ❧ competition law enforcement agency established in November 2009.
- ❧ Enactment of the competition law however preceded formulation and adoption of comprehensive competition policy:
 - ❧ process of formulating that policy was ongoing at the time of the fact-finding visit to Seychelles in October 2012.

COMPETITION AND CONSUMER PROTECTION LAW AND POLICY DEVELOPMENT (2)



- ❧ Seychelles has had a formal consumer protection law since 1997:
 - ❧ the law was reviewed in 2010, and is enshrined in the *Consumer Protection Act, 2010*;
 - ❧ The law is comprehensive in its coverage of consumer protection and welfare issues.
- ❧ There is however absence of an articulated national consumer protection policy.

Fair Trading Commission Act



- ❧ The FTC Act provides for the institutional arrangements necessary for the enforcement of the competition and consumer protection laws.
- ❧ The major concerns found in the Act are as follows:
 - ❧ s32(2) provides that the FTC may decide not to investigate a complaint if the complainant has obtained reasonable redress regardless of whether the complaint has wider effects of a competition or consumer protection nature;
 - ❧ s39(1) gives the right to be heard at the Board's hearings only to the complainants, and not to the respondents and other interested parties;
 - ❧ the fines provided for breach of the Act inadequate to encourage compliance (the most severe fine is SCR400,000 (about US\$30 800))

Fair Competition Act



- ❧ The Fair Competition Act (FCA) includes most, but not all of the elements usually encompassed in a national competition law:
- ❧ There are however some important omissions and uncertainties in the application of the law, particularly with regard to the following:
 - ❧ the definition of some competition terms;
 - ❧ source of competition investigations; and
 - ❧ the dominance test under s7(2).
- ❧ Other identified application concerns include the following:
 - ❧ the lack of clarity between horizontal and vertical agreements and their effects on competition; and
 - ❧ *per se* prohibited anti-competitive agreements and practices can be authorised under the Act on application

Consumer Protection Act



- ❧ The Consumer Protection Act (CPA) contains most of the elements that are usually encompassed in a national consumer protection law:
 - ❧ while it is not as expansive in its coverage as some other consumer protection laws, it addresses areas of major consumer concerns.
- ❧ However, in respect of its enforcement, there are 3 main conclusions that give credence to stakeholder concerns that the law lacks teeth:
 - ❧ the principal sanctions imposed had been fines, which had tendered to be well below the specified maximum fines;
 - ❧ the specified maximum fines are below that likely to provide a substantial deterrent effect; and
 - ❧ the use of a wider range of sanctions and remedies would provide the FT with greater flexibility on how it responds to non-compliance and would facilitate and encourage increased compliance.

INSTITUTIONAL FRAMEWORK (1)



- ❧ There are two main institutions that are provided for under Seychelles' competition and consumer protection legislation:
 - ❧ the Fair Trading Commission (FTC); and
 - ❧ the Appeal Tribunal.
- ❧ The FTC is an autonomous Statutory Body with two operating arms: (i) an administrative Secretariat; and (ii) a governing Board of Commissioners.
- ❧ It is a quasi-judicial body with both investigative and adjudicative functions, but with no clear separation of the investigative and adjudicative functions:
 - ❧ however in practice, the Secretariat acts as the FTC's investigative arm while the Board acts as its adjudicative arm

INSTITUTIONAL FRAMEWORK (2)



- ❧ The Appeal Tribunal established under the FTC Act is an important institution in the enforcement of Seychelles' competition and consumer protection laws:
 - ❧ the Tribunal had however still not been established at the time of the fact-finding visit:
 - ❧ reasons given were that the chairperson must be a senior lawyer, and such lawyers are in short supply in Seychelles.
- ❧ While no case involving competition decisions of the FTC had been appealed against by the time of the fact-finding visit, a number of appeals in consumer protection decisions had been made, and these were being held in abeyance pending the establishment of the Tribunal:
 - ❧ the absence of the Tribunal was a serious legal omission and appellants may win cases against the FTC on technicalities because of that.

Case Handling (1)



- ❧ Since commencing operations in 2010, the FTC had handled over 280 cases by the time of the fact-finding visit, of which 274 were on consumer protection and 16 on competition.
- ❧ Abuse of dominant position cases led the number of competition cases handled (38%) followed by anti-competitive agreements (25%) and resale price maintenance (19%):
 - ❧ only one merger transaction had then been examined by the FTC.
- ❧ About half of the competition cases investigated by the FTC were initiated by the Commission.

Case Handling (2)



Case Category	2010	2011	2012 (to Oct)	Total
Abuse of Dominant Position	2	0	4	6
Anti-Competitive Agreements	0	3	1	4
Resale Price Maintenance	1	0	2	3
Mergers and Acquisitions	1	0	0	1
Anti-Competitive Business Conduct (collusive and cartel-like behaviour)	0	0	2	2
Total	4	3	9	16

OTHER RELEVANT ISSUES



- ❧ Seychelles has a number of sector regulators, some with competition functions:
 - ❧ most were established before the FTC;
 - ❧ this apparent diffusion of competition law application and enforcement has the potential to reduce the economy wide benefits of the competition policy and law and increase compliance costs and uncertainties for business:
 - ❧ the absence of an articulated national competition policy exacerbates these problems.

FINDINGS AND RECOMMENDATIONS (1)



- ❧ The reviewers made a number of recommendations aimed at improving the enforcement of competition law in Seychelles:
 - ❧ recommendations directed at the Government, the FTC and cooperating partners .
- ❧ Recommendations concerning the enforcement of the *Fair Competition Act* include:
 - ❧ the desirability of developing a comprehensive competition policy;
 - ❧ clarification of the range of company mergers and acquisitions encompassed by the merger control provisions of the Act and trigger thresholds for their application;
 - ❧ the definition of 'dominance' and listed types of 'abusive conduct';
 - ❧ differentiation between vertical and horizontal conduct provisions;
 - ❧ clarification and rationalisation of the types of conduct that can be authorised.

FINDINGS AND RECOMMENDATIONS (2)



- ❧ Recommendations concerning the enforcement of the *Consumer Protection Act* include:
 - ❧ the desirability of developing a comprehensive consumer protection policy;
 - ❧ low cost access to information required for voluntary compliance; and
 - ❧ additional and increased sanctions and remedies.
- ❧ Recommendations concerning the enforcement of the *Fair Trading Commission Act* include:
 - ❧ the respective roles and responsibilities of the FTC Secretariat and Board of Commissioners;
 - ❧ the size, composition and remuneration levels of the Board and the Secretariat;
 - ❧ the role and responsibilities of the CEO; and
 - ❧ rationalisation of important definitions across the three Acts administered by the FTC

FINDINGS AND RECOMMENDATIONS (3)



- ❧ Recommendations specifically directed to the FTC concern the following:
 - ❧ a proposed policy rational for enforcement strategies and decisions;
 - ❧ staff and Board member development;
 - ❧ investigations, case hearings and determinations;
 - ❧ relationships with stakeholders, including sector regulators and the National Consumer Forum (NATCOF); and
 - ❧ advocacy and education.

CONCLUSION



✧ The overall assessment was that while the identified legislative amendments are required to bring the laws and the FTC up to 'best practice' standards, the Seychelles is being well served by the Commissioners, the CEO and staff of the FTC, given the current legislation and their relatively short experience.

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