



Bénin



Burkina Faso



Côte-d'Ivoire



Guinée-Bissau

“Key Competition and Consumer Protection Priorities
for Regional Integration in Africa :

*The experience of regional organizations in
the field of Competition and Consumer
Protection (WAEMU)*



Mali



Niger



Sénégal



Togo

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INTRODUCTION : Relevant Competition Provisions in WAEMU Treaty



Art 4 a

- strengthening the competitiveness of economic and financial activities of States members in an open and competitive market

Art 4 c

... create between the Member States a common market based on the free movement of people, goods, services, capital and the right of establishment of persons exercising an independent or salaried activity, as well as on a Common external tariff and a common commercial policy ;

Art 76 c

... for the establishment of the common market, the Union works for the establishment of common competition rules applicable to public and private companies as well as to public aid.

INTRODUCTION : Relevant consumer protection provisions in the WAEMU treaty



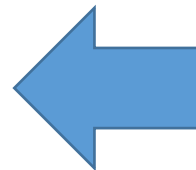
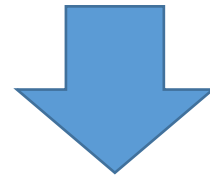
Art 5

- In the exercise of the normative powers which this Treaty attributes to them and to the extent compatible with its objectives,
- the organs of the Union promote the enactment of **minimum requirements and framework regulations** which its Member States are responsible for completing as necessary, in accordance with their respective constitutional rules.

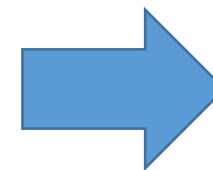
INTRODUCTION : **Main questions**



**Legal framework for
competition policy ?**



**Review
and Prospects (competition
and consumer protection) ?**



**Measures against the
effects of COVID 19?**

INTRODUCTION: **Outline**



I- legal framework for competition policy

II- Review and Prospects

III-Measures against the effects of COVID 19

I- legal framework : Competition policy main goals



1

promotion of economic policies

Influence economic activity (development policy); Promotion of competitiveness through optimal allocation of resources and economies

2

Consolidation of the Customs Union

Ensuring optimal functioning of the Customs Union; maintain normal competition on the Union market

3

contribution to the liberalization of services

promote the emergence of competitive companies, capable of satisfying domestic demand and facing international competition



WAEMU Regional Integration

I- Legal framework : **WAEMU Mandate in competition**



ENTERPRISES

1. **anti-competitive agreements** = agreements, associations and concerted practices between companies, having the object or effect of restricting or distorting competition within the Union
2. **abuse of a dominant position** = all practices of one or more companies, comparable to an abuse of a dominant position on the common market or in a significant part of it

MEMBER STATES

1. **State aid** = public aid likely to distort competition by favoring certain companies or certain productions
2. **Anticompetitive Practices Attributable to States** = Prohibition to enact or maintain measures contrary to the competition rules for public enterprises and to enact measures private enterprises allowing to avoid the constraints imposed by article 88

I- Legal framework : Competition Institutional frame



community bodies

- ✓ Council of Ministers: regulatory function to facilitate the application of prohibitions (Regulations and Directives)
- ✓ WAEMU Commission: implementation (Decisions)
- ✓ Court of Justice (actions for failure to fulfill obligations, assessment of legality, full legal proceedings, Opinion)

The authorities of the member states:

- ✓ Central administration (Ministries in charge of Trade);
- ✓ Administrative independent authorities (general and sectoral skills)

I- legal framework : Competition decisions

☐ Following the investigations and instructions, the Commission adopted 16 Decisions :

✓ 03 decisions relating to procedural incidents;

✓ 04 negative clearance and individual exemption decisions;

✓ 09 sanction decisions.

✓ And 13 draft decisions (sanction / injunction / negative certificate) finalized pending adoption by the College of Commissioners



II- Review and Prospects : Competition global report

Member state	Number of cases	Settled cases	Current cases	Cases closed or prescribed
Bénin	03	01	01	01
Burkina Faso	09	03	05	01
Côte d'Ivoire	10	05	05	00
Guinée Bissau	00	00	00	00
Mali	06	04	01	01
Niger	03	02	01	00
Sénégal	08	03	03	02
Togo	05	02	01	02
Total =	44	20 (45,45 %)	17 (38,63 %)	07 (15,90 %)

II- Review and Prospects : competition cases investigated by activity sectors

multi-sector cases investigated :

- ✓ Steel processing,
- ✓ Mortuary conservation,
- ✓ Insurance,
- ✓ Bank,
- ✓ Airport layover assistance,
- ✓ Product import, Port handling...

II- Review and Prospects : collaboration with ECOWAS in competition

Problem : In West Africa, two laws characterized by identical substantive rules and different application procedures coexist in the same economic sphere.

Insofar as the eight (08) member states of UEMOA all belong to ECOWAS, the application of two pieces of legislation can pose some problems. These include:

- ✓ the contrariety of decisions linked to the different interpretation of the rules;
- ✓ the plurality of control and decision-making bodies;
- ✓ legal uncertainty for companies and states;
- ✓ the problem of the applicability of which rule in which space;
- ✓ the effectiveness of the fight against cross-border anti-competitive practices at regional level;



II- Review and Prospects : collaboration with ECOWAS in competition

Remark = UEMOA and ECOWAS competition laws can be applied in parallel **if appropriate measures are adopted on the basis of the legal foundations** (UEMOA Treaty and the ECOWAS Additional Acts).

- ✓ Article 13 paragraphs 3 ECOWAS Additional Acts on Competition expressly provides for the collaboration of the both institutions in the context of the implementation of the Community's competition policy.
- ✓ Article 3 WAEMY Treaty : "the Union establishes all useful cooperation with existing regional or subregional organizations"
- ✓ ECOWAS competition framework = subsidiarity between member states
- ✓ WAEMU competition framework = centralized authority

II- Review and Prospects : collaboration with ECOWAS in competition

- **Solution** = Draft cooperation agreement between WAEMU and ECOWAS for the implementation of competition rules in West Africa (work of the joint technical secretariat)
 1. **The definition of the criteria for sharing jurisdiction between the two Authorities** with regard to international best practices
 2. **The principle of a single check to avoid multiple checks on compliance with the competition rules applicable to them**, As far as possible, control should be exercised by a single authority,
 3. **The principle of the allocation of exchanges** in order to allow the ECOWAS Commission to hear cases affecting the ECOWAS community market and to leave the files of the effects to the UEMOA Commission and the member states limited to the WAEMU Common Market or to national territories;
 4. **The definition of a "de minimis rule"** which confers on the ARCC exclusive competence when certain cases of Community dimension reach a threshold or ceiling previously determined;
 5. **The possibility for ARCC, in exception of the principle of allocation of trade, to deal with certain cases of particular interest to the Community**, in particular when access by operators from other non-WAEMU ECOWAS member states to WAEMU market, is significantly hampered.

II- Review and Prospects : **WAEMU initiatives in Consumer protection**

- The Commission by referring to article 5 of the Treaty took initiatives, with a view to the establishment of **a regulatory framework relating to consumer protection** by obeying the following concerns :
 - ✓ **on the political level**, to comply with the United Nations Guiding Principles for consumer protection by making consumer protection one of the priority actions;
 - ✓ **on the technical level**, offer consumers the possibility of choosing good quality products and services under optimal conditions of commercial transparency without imposing more than necessary constraints on companies

III- Consumer protection : **WAEMU initiatives in Consumer protection**

- **collect of informations in all member states with a consultant proposed by UNCTAD**
- **preliminary WAEMU Directive draft establishing the legal and institutional framework for consumer protection**
- **and the draft action plan to strengthen the capacities of stakeholders in consumer protection;**
- **Validation of the preliminary draft UEMOA Directive and the draft capacity building action plan, by consumer protection experts.**

III- Measures against the effects of COVID 19

❑ PROBLEM : Consequences of COVID 19 in WAEMU :

- ✓ In 2020, the Union's macroeconomic situation will deteriorate significantly, with an average growth rate of 2.7% (initial forecast of 6.6%).
- ✓ social measures and reviving economic activity needs amounts to 5,284.9 Billion CFA francs. This would worsen the deficit budget, including grants, to represent 5.5% of GDP compared to 2.7% initially planned.


❑ SOLUTION : to contribute to the funding of national response plans and is particularly pleased to :

- ✓ the granting of concessional loans for the benefit of the States, up to 120 billion, by the allocation, by the BCEAO and the WAEMU Commission, of 40 billion to the BOAD Bonus Fund;
- ✓ the coverage by the BCEAO of the liquidity needs expressed by the banks.

MEASURES		BENIN	BURKINA FASO	COTE D'IVOIRE	GUINEE BISSAU	MALI	NIGER	SENEGAL	TOGO
Hydro-alcoholic gels and respiratory protection masks	quality standards for products used to prevent pandemics	X	X	X	X	X	X	X	X
	subsidy of mask prices and provision of masks	X	X	X		X		X	X
	price cap for hydro-alcoholic gels		X	X		X		X	X
	price caps for respiratory protection masks		X			X			X
	Obligation to wear masks	X	X	X				X	X
	Promotion of local production of gels	X	X	X				X	
	Promotion of local production of masks	X	X	X		X	X	X	
pharmaceuticals	exemption from taxes and customs duty on pharmaceutical products, medical consumables and equipment used in the fight against coronavirus	X	X			X			X
Consumer goods and basic necessities	Price caps on consumer goods and basic necessities		X	X		X		X	X
	Subsidy and provision of essential products		X	X		X	X	X	X
	Strengthening price surveillance and consumer products		X	X		X	X	X	X
Establishments open to the public (bar, restaurants, places of entertainment)	Closure of establishments open to the public	X	X	X			X	X	X
	Promote of remote working	X	X	X	X	X	X	X	X
electricity and water	Free electricity and water for certain social groups		X	X		X			X
Business support and economic recovery	Support fund for large companies		X	X			X	X	
	Support Fund for SMEs / SMIs		X	X			X	X	
	Support fund for the informal sector			X					
	Reduction in VAT rates for the hotel and catering sectors		X						
	support fund for the most vulnerable families			X		X			

Conclusion



1. **WAEMU competition policy is in line with international standards** 
2. **Implementation difficulties linked to the weak cooperation of member states and the slowness of the decision-making process**
3. **Reform to ensure greater involvement of member states and strengthen cooperation with ECOWAS**
4. **Promote joint UEMOA and ECOWAS action in the framework of competition negotiations in the African Continental Free Trade Area (ACFTA)**
5. **Ex-post evaluation of WAEMU competition policy at UNCTAD in 2020**
6. **Adoption of the consumer protection Directive and the capacity building action plan, by the Council of Ministers**