



Road Ahead for the EAC Regional Competition Regime

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Contents

Acknowledgement	i
Abbreviations	iii
Foreword	v
Preface	vii
Executive Summary	ix
1 Introduction	1
Progress in Implementation of the EAC Competition Act, 2006	2
2 Partner States Readiness for Competition Policy Implementation	6
Trade Policy	6
Industrial Policy	8
Agricultural Policies/Agricultural Development Strategy	9
Investment Policy	9
Public Procurement Policy	10
3 Cross-Border Competition Concerns in the East Africa Community	12
The Need for a Regional Competition Law	12
Possible Source of Competition Concerns in the EAC Region	13
Select Sectors for Commissioning Market Inquiry	16
<i>Breweries Sector</i>	17
<i>Cement Market</i>	19
<i>Banking Sector</i>	21
<i>Mobile Telecommunications Market</i>	23
<i>Air Transport Industry</i>	24
4 Challenges to the Implementation of the Competition Act at the Regional-level	27
Institutional Challenges	27
Differences among EAC Country Economies	29
Political Economy Challenges	30
5. Dealing with Cross-border Competition Concerns in the EAC	31
6. Conclusions and Recommendations for the Acceleration of Implementation of EAC Competition Policy and Law	37
References	39
Endnotes	41

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Clement V Onyango
Director
CUTS Nairobi, Kenya

Abbreviations

CADE	Council for Economic Defence
CCC	COMESA Competition Commission
COMESA	Common Market for Eastern and Southern Africa Producers Association
DTIS	Diagnostic Trade Integration Study
EABL	East African Breweries Limited
EACPA	East African Cement
EAC	East Africa Community
EACOMP	Accelerating the Implementation of the EAC Competition Policy and Law
EU	European Union
FCC	Fair Competition Commission
FDI	Foreign Direct Investment
MINICOM	Ministry of Trade and Industry
NTB	Non-tariff Barriers
PPP	Public Procurement Policy
PPOA	Public Procurement Oversight Authority
MINECOFIN	Ministry of Finance and Economic Planning
MNCs	Multinational Companies

OECD	Organisation for Economic Cooperation and Development
REC	Regional Economic Community
SADC	South African Development Community
SCTIFI	Sectoral Council on Trade, Industry, Finance and Investment
SSA	South Africa Airways
SSEs	Small Scale Enterprises
WTO	World Trade Organisation

Foreword

The East Africa Community (EAC) is a regional economic community of five Partner States, which have agreed to promote regional economic integration through trade development among other activities. Following the establishment of the EAC Customs Union (CU) and the Common Market (CM) in 2005 and 2010, respectively, has resulted in Intra-EAC and International trade growing annually by 20 percent to 30 percent. Foreign Direct Investment (FDI) inflows into the region have also increased from US\$683mn to US\$1.7bn over the past five years.

As EAC integration and cross-border trade and investments liberalisation deepen, there is need for a level playing ground for economic operators. This would guard against the tendencies for some firms to amass the benefits of integration by distorting the markets. In the forgoing regards, it is important to continue underscoring the importance of implementing a regional competition policy and law, especially in dealing with cross-border issues. Studies already undertaken have shown the importance of this in the EAC region and making cross references to other regional integration groupings, such as the European Union.

The publication, therefore, **'Road Ahead for the EAC Regional Competition Regime'** Synthesis Report, lays a good foundation for increasing competition awareness creation and advocacy in the EAC region. The report highlights: the status of the competition related policy environment in the EAC Partner States; the areas, which need close scrutiny by the national competition authorities; the provisions of the EAC competition law and how it can be used to deal with such anti-competitive practices. The report further identifies the challenges facing the implementation of the EAC Competition Policy and Law at both the national and regional-level, respectively, and proposes recommendations that can be deployed to mitigate these challenges in ensuring that we have well-functioning competitive markets in the EAC region.

The above said publication will be of great benefit to the EAC Partner States' national competition authorities and departments charged with handling competition related matters, given their role in facilitating and advocating coherence between competition authorities and sector regulation. This will, therefore, act as a guide on areas that can be prioritised during competition advocacy. Additionally, Private Sector Associations can greatly be benefited from the knowledge on how to facilitate enforcement and compliance with the EAC Competition Law and Policy. Civil Society Organisations (CSOs) can similarly learn on areas that they might need to provide support to the national authorities while carrying out advocacy and awareness creation on the EAC Competition Law and Policy. The implementation of the EAC Competition Law and Policy cannot succeed unless there is a societal understanding of the Law and acceptance of its value to development policy.

In conclusion, the Report is helpful in raising awareness, reviewing competition policy issues in the region and providing a good starting point for collaborative efforts amongst all stakeholders in ensuring that the EAC region has a vibrant competition regime.

Peter Kiguta
EAC Director General (Customs & Trade)
EAC Secretariat

Preface

The East African Community (EAC) countries have been observed to be emerging rapidly as investment destination for multinational companies, following the establishment of a Common Market in 2010. The common market seems attractive to the investors because currently it has more than 153mn consumers. The region has also been making bilateral trade negotiations with the US under the African Growth and Opportunity Act, the European Union under the Economic Partnership Agreements, and China which has been recognised to be among the fast growing economies in the world.

This therefore indicates that the enlarged EAC market will have many players from the community and from outside the community given the nature of these trade agreements. However, for the increased trade and its resultant benefits to have the trickle-down effect as literature and experience has shown, it is important to ensure that the players operate under a vibrant competition regime in the EAC.

In order to ensure that the EAC consumers and small enterprises gain from competitive trade, the Heads of States in the EAC assented to the EAC Competition Policy and Law in 2004 and 2006 respectively. The enforcement of these blueprints on competition therefore implies having a competitive EAC market which means that there is more choice, better quality and lower-priced products for the consumers in addition to easier market access and growth and penetration for firms of all sizes.

Despite having the impeccable blueprints on ensuring that the EAC markets are competitive, there did exist a number of alleged anti-competitive practices with a cross-border effect and going unchecked. This was alarming given the number of multinational companies entering the EAC market, as well as the conduct that had been observed from the current market players, which exhibited a number of anti-competitive practices. It was discovered that such market conduct was taking place as a result of lack of implementation of the EAC Competition Policy and Law. This prompted CUTS Nairobi to conceptualise this project

(EACOMP project) that would investigate the impediments to the implementation of the EAC Competition Policy and Law, nationally and regionally and highlight possible anti-competitive tendencies in the region.

This is a synthesised report of the national-level and the regional-level findings on the status of the EAC Competition Policy and Law implementation. The report details the policy constraints for implementation of the same and also highlights the sectors for market inquiry given the conduct exhibited by a number of enterprises. The report further provides recommendations on how to promote competition in the region.

The report entitled '**Road Ahead for the EAC Regional Competition Regime**' is intended to provide a baseline on the status of competition in the region and catalyse regional discussions on the need for an effective competition regime amongst the Partner States nationally and regionally.

CUTS would like to thank Trade Mark East Africa greatly for its financial support to conduct the research; the EAC Directorate of Trade for supporting throughout the project and the national competition authorities for their continued engagement with the CUTS team by giving updates and necessary information. The CUTS team has worked hard in development of the report and we hope that the report will be disseminated widely and used as a useful reference on the subject.

Pradeep S Mehta
Secretary General, CUTS International

Executive Summary

The East Africa Community (EAC) has achieved a number of milestones over the past few years. These include the formation of a Regional Economic Community (REC), implementation of a Customs Union Protocol (2004), launching of a Common Market (2010), and signing of Monetary Union in 2011 (although this is yet to be implemented). However, the intended objectives from these milestones are threatened if fair competition principles are not observed in the markets – nationally and regionally. Cognisant of this, the Community enacted the EAC Competition Act, 2006, which has not yet been implemented.

The vibrant intra EAC trade as a result of regional integration under the EAC Common Market has, however, brought forth the need for the implementation of the EAC regional competition regime. There are indications that market players in the region try to adopt anti-competitive practices in order to stifle competition in the market. The absence of a competition enforcement agency at the regional level encourages firms to adopt such opportunistic behaviour. CUTS Nairobi, with support of Trade Mark East Africa (TMEA) undertook a research and advocacy project entitled ‘**Accelerating the Implementation of the EAC Competition Policy and Law**’ (EACOMP), in five member states of the East African Community (EAC)..

Using a methodology combining literature review, field surveys and stakeholders’ interviews, studies were carried out in each of the five EAC Partner States and country-specific research reports were produced. The country research reports highlight the policy gaps and certain anti-competitive tendencies and practices within the national boundaries and/or the region. Targeted briefing meetings were organised with key stakeholders in the Partner States and at the EAC Secretariat to highlight how the lack of effective enforcement of the regional competition could stifle the benefits expected for consumer and/or producers, from an expanded trade and investment regime in the EAC.

The country reports show that the Partner States have been making efforts to enhance participation in the EAC markets through conducive trade, industrial and investment policies, which has implications on market competition. Further, there has been increased intra EAC trade and Foreign Direct Investment (FDI) flows, although this has also resulted in an increase in anti-competitive possibilities, which go unregulated due to lack of a competition regulatory authority at the EAC-level.

Analysis of country level information and stakeholder feedback highlight the following issues for facilitating forward movement in enforcement of the EAC regional competition regime:

- Regional trade ‘policies’ and ‘principles’ in the EAC should be evolved and implemented by aligning them with principles of fair competition;
- An environment of competition among ‘Member States’ would help them improve their national investment promotion regimes, and compete to attract investments. The right enabling environment would help them do that. Members should learn from each other how best this could be achieved;
- A mechanism for the regional competition authority to work hand-in-hand with national competition agencies/departments dealing with competition should be developed (learn from existing experiences in other regions)
- Taking a leaf out of the the COMESA Competition Commission, the enforcement of the regional competition regime should not be deferred to wait till such time that national competition regimes are developed in all the EAC member states. In any case, in the first few years of operation (as experience of other jurisdictions suggest), much of the focus would be on institution-building and designing the regulatory architecture of the EAC competition authority. This will give adequate time to the ‘lagging’ member states to catch-up.
- Infrastructure development is one of the key requirements to sustain and enhance trade, commerce and economic activities across the developing world. National governments should design enabling (pro-competitive) conditions for service providers even from other member states to bid for some of these infrastructure projects;
- Procurement agencies should develop a ‘common’ regional pro-competitive guideline for public procurement. Such a consistent approach would help build synergies among country-specific procurement agencies. It will also develop the capacity among firms from one member state to bid for infrastructure project in another;

- The report raises the need for close monitoring of MNCs in the region, especially those with a ‘past record’ of engagement on anti-competitive practices elsewhere. However, it remains to be seen how effective a young and fledgling regional competition agency can be in monitoring behaviour of such large MNCs;
- High exchange rate volatilities within the EAC region acts as a source of market rigidities and facilitate dominance. Central Banks in member states would need to cooperate in order to lower exchange rate volatilities in the region;
- In spite of the significant efforts made by the EAC member states in strengthening the pillars of regional integration, a number of NTBs still exist in the region. These NTBs affect the easy movement of goods and services in the region – thereby impacting level of competition in markets;
- Industrial policy is sometimes seen to protect domestic firms and other interest groups like small producers, MSMEs – that provide much needed job and economic opportunities for people in the Community. There should be scope and flexibility within the regional competition regime to accommodate interests of such groups within the purview of the law (viz., clauses of ‘exception/exemption’). Any decision to reverse such a strategy/approach should not only be well-thought out, but also should be based on the analysis of facts and figures
- There are a number of sectors that would need greater attention from the regional competition authority, once it is set up. This report provides an overview of the nature and composition of these markets, including beverages, cement, mobile phone, aviation, etc. EAC Secretariat should commission deeper and more analytical studies to develop its internal capacity to monitor these sectors;
- The SCTIFI identified capacity building as a critical element for the effective enforcement of the regional competition regime. Such capacity building initiatives should be designed by the EAC Secretariat and undertaken with support from development partners and international organisations;
- A mechanism for exchange of information pertaining to cases should be developed between member states;
- In the first phase (first few years) of its establishment, the EAC Competition Agency should focus on awareness generation and outreach activities, together with institution-building, awareness generation and outreach activities;

- It should also identify areas for strengthening institutional features to facilitate effective implementation of the regional competition legislation. COMESA Competition Commission's experience would be extremely relevant for the EAC Competition authority to draw lessons from.

This study, strongly recommends that the EAC Partner States implement decisions of the Sectoral Council on Trade, Industry, Finance and Investment (SCTIFI) of June 2013, and ensure that the regional competition body is adequately endowed to be able to carry out the 'initial' activities as envisaged above. The SCTIFI had identified three priority action areas: (i) to review and harmonise national laws on competition to confirm with the EAC Competition Act; (ii) to establish EAC Competition Authority; and (iii) capacity building of the EAC competition activities. The EAC Secretariat needs to report on the actions that have been taken so far in each of these three areas, and perhaps adopt a staggered approach for better (and more efficient) deployment of resources and attention.

There is also need for identification of key (state and non-state) stakeholders and institutions (government departments, regulators, policymakers, etc.) to develop their capacity and enable pressure-building from the bottom to influence political will in implementing regional and national competition laws in the EAC. Feedback from key actors in the region, reveal low political will towards advancing the 'regional competition agenda'.

In this whole process the role and responsibility of development partners is crucial. In addition to assisting national and regional competition authorities, these actors will have to play a key role in highlighting benefits of competition reforms to enable greater attention to the issue.

1

Introduction

Competition has always been at the heart of the Partner States since the inception of the EAC. This is evident from the EAC Treaty signed in 1999 to create the Community, where competition was among the issues to be detailed in the Customs Union Protocol that was to be established as the first milestone of the Community. Article 17, 20 and 21 of the Customs Union Protocol establishing the EAC Customs Union have provisions that promote competition by prohibiting anti-competitive practices, perpetuating competition principles and consumer protection.

The Community's Competition Policy was adopted in 2004, and the EAC Act, 2006 was enacted to operationalise it. However, this has partially been implemented. In 2010, upon the ratification of the Protocol establishing the Common Markets, the lacuna in implementation of regional competition policy and law became apparent, owing to the larger market space in the community.

The EAC Secretariat highlighted that some of the main challenges in implementation of the EAC Competition Act, 2006 were:

- The lack of competition laws in one Partner State and
- Technical capacity constraints to deal with competition issues both nationally and regionally.

Other issues, which stakeholders have identified as being responsible for the slow progress in implementing the law include limited buy in from key stakeholders, for example policy-makers, business community and civil society due to inadequate appreciation of the importance of competition reforms from a public welfare perspective.

It is within this context that a research and advocacy oriented project entitled '**Accelerating the Implementation of the EAC Competition Policy and Law**' (EACOMP) was envisaged. The project, implemented by CUTS Nairobi with the support from TMEA was intended to assess the impediments to the implementation of the EAC competition regime

and document evidence of anti-competitive business practices and their negative impacts. The project was launched in 2013 and was designed to accomplish the following objectives:

- (a) Evaluate impediments to evolve national and regional competition regimes and identify the best way for addressing such impediments through a participatory process involving multiple stakeholders in the EAC region.
- (b) Develop the capacity of national stakeholders including policy-makers, regulators, civil society organisations (CSOs), particularly consumer groups, academics and the media persons to understand and appreciate national and regional competition concerns.
- (c) Disseminate information materials in order to mobilise public support for competition policy reforms and
- (d) Help to build constituencies for promoting competition and consumer awareness by identifying a representative group of national stakeholders and transforming them into a core cadre (nationally) on competition policy, regulatory issues and consumer protection.

CUTS has and will continue to use the evidence to advocate for an enabling environment to support effective implementation of competition legislations nationally and regionally in the EAC through multi-stakeholder engagement.

This Synthesis Paper combines findings from the national-level research it with information gathered about policy and institutional affairs related to the EAC regional implementation regime. The report further identifies possible sectors that could be affected by cross-border anti-competitive practices, which the EAC Competition Authority can prioritise once established.

Progress in Implementation of the EAC Competition Act, 2006

As already mentioned, the EAC Competition Policy and the EAC Competition Law were adopted by the Council in 2004 and 2006 respectively. The main objective of the Competition Act is to maintain and promote competition and provide consumer welfare. The Act seeks to promote and protect fair competition in the Community, provide for consumer welfare, and to establish the EAC Competition Authority.

However, implementation of the EAC Competition law has progressed slowly since its enactment.

Regular meetings specific to competition were held around 2008 and 2009 while developing the EAC Competition Regulations in 2010. The EAC Competition regulations have been developed and Section 38 of the Act, which deals with the appointment of Commissioners, has been amended to allow for the appointment of five Commissioners instead of the three that the Act initially provided for. The increase in the number of Commissioners followed the admission of Burundi and Rwanda into the EAC. Issues for discussions during meetings at that time included the development of competition regulations; development/ review of the roadmap to operationalise the EAC Competition Act 2006; conducting a study to determine the state of competition within the Community; and to review the approximation of Partner States' Competition Law and Bills to the EAC Competition Act 2006.

Thereafter, competition issues have also been discussed during other meetings. The Sectoral Council on Trade, Industry, Finance and Investment (SCTIFI), during its meeting held on June 10, 2013 adopted a roadmap towards establishment of the EAC Competition Authority. The roadmap has three objectives, which are:

- (a) to review and harmonise national laws on competition to confirm with the EAC Competition Act
- (b) to establish EAC Competition Authority; and
- (c) capacity building of the EAC competition activities.

In addition, the roadmap also identifies activities and timelines for the deliverables. According to the roadmap, harmonisation of Competition laws should have taken place by September 2013. Issues of disagreement in drafting process of the roadmap comprised the discourse on whether the EAC Competition Act should be operationalised before all partner states develop their own Competition laws.

Implementation of the Act is at different stages in the five Partner States. Review of the proposals to amend the EAC Competition Act and a review of the EAC Partner States national Competition laws to determine the areas of approximation was undertaken in September 2013, following the adoption of the roadmap towards the establishment of the EAC Competition Authority.

Whereas, all of the countries except for Uganda have competition laws, it is only Kenya and Tanzania, which have a long experience in implementation of Competition policies and laws. However, the remaining

Partner States are in the process of implementing their national competition regimes.

Meetings on EAC Competition law have been far in between since the enactment of the law. This could be attributed to different reasons, one being that there has not been a stable officer till recently, responsible for competition issues at the Secretariat. The other reason could be attributed to the slow progress made in the implementation of the roadmap, which envisaged review and harmonisation of national laws on competition in order to conform to the EAC Competition Act.

As already mentioned, the last meeting exclusively on Competition law was held in September 2013 in Mwanza, Tanzania, following the adoption of a roadmap towards the establishment of the EAC Competition Authority in Arusha in June 2013. The specific objectives of the meeting were to (a) review proposals to amend the EAC Competition Act, 2006; and (b) review the EAC Competition and Partner States national Competition laws. The meeting was attended by competition policy experts, officials from the EAC Partner States and staff from the EAC Secretariat.

The EAC Competition Act can still be implemented even when there are some countries without competition authorities in the EAC member states, as the situation in Common Market for Eastern and Southern Africa (COMESA). However, the majority of the stakeholders consulted during the project believed that a critical pre-requisite step for the implementation of EAC Competition law is to enact Competition laws in each member state and establish a competition authority. The authority can either be a functionally independent authority or a Department under a relevant line Ministry.

Burundi has currently enacted a Competition law and has set up a Competition Department at the Ministry of Trade, Industry, Post and Tourism to facilitate for the implementation of the Competition Act. Similarly, Rwanda has enacted a Competition and Consumer Protection Act and has since established a Department in the Ministry of Trade and Industry (MINICOM) to start operations concerning competition issues. The Competition and Consumer Protection Regulations for Rwanda are currently being drafted. Uganda has a draft Competition Bill (2012), which is yet to be tabled before National Parliament for adoption.

For the case of Uganda, which has shown the slowest progress in the establishment of a national competition regime, the Competition Bill was expected to be enacted by the cabinet before the end of 2014, which did not happen. As already mentioned, Kenya and Tanzania have Competition

laws and regulations as well as independent competition authorities in place, which actively conduct market enquiries. Tanzania, unlike Kenya, has established an appellate body for competition matters: the Fair Competition Tribunal.

The next planned step for the implementation of the EAC Competition Act is to have the Authority domiciled in the EAC department of Trade, Industry, Finance and Investment. The Sectoral Council on Trade, Industry, Finance and Investment, during their meeting held on May 29, 2014 in Arusha, Tanzania, directed the Secretariat to establish the Competition authority in the Financial Year 2014/2015. According to the key actors, the roadmap for the implementation of the EAC Competition Act is currently being reviewed.

2

Partner States Readiness for Competition Policy Implementation

Trade Policy

Trade policy is important as it is a tool that could be used to balance between competition and domestic industry protection. Adoption of competition reforms, especially at the regional-level, can be resisted if there are some member countries that have not yet opened up their markets due to the need to shield some of their domestic firms from foreign competition. Trade liberalisation was generally done in all countries in line with regional integration and market access objectives, which is quite complimentary to competition enhancement objectives.

A WTO Working Paper (1998) on 'Relationship of Trade and Competition Policy to Economic Growth' observed that competition policy and law was part of 'package' of inter-related reforms which also includes trade liberalisation, private sector development and sector-specific regulatory reforms/deregulation. These elements of the reform 'package' were considered to be mutually reinforcing.

However, despite opening up and expansion of markets, the Partner States have also had to promote their small-scale enterprises through trade policies by giving them incentives and shielding them from foreign competition. While in initial years after trade and economic liberalisation, such a tendency in national government's policy can be understood. Continuation of such an approach to shield domestic industries from foreign competition is seen to be influenced by the desire to satisfy demand of certain 'interest groups' or 'special groups.' It might be crucial for countries to have this approach in certain markets, but a broad-brush protection tendency is not helpful to domestic industry – which can become inefficient and unproductive over time.

In Kenya, the 2009 National Trade Policy focusses on encouraging increased international trade by seeking to promote local SMEs. The Rwanda Trade Policy also includes the use of protective tariffs for industrial development for SMEs growth. In Tanzania, the 2003 Trade Policy provides for the adoption of appropriate transitional measures to protect domestic industries that could be threatened by liberalisation. The Uganda National Trade Policy while embracing liberalisation remains keenly cognisant of any negative effects on local producers and traders.

EAC Partner States have, however, a number of common trade policy elements aiming at increasing trade, which can be leveraged upon in ensuring that competition is promoted, in the regional market. A common trade policy ideally creates a conducive market environment for competition to prevail in the markets. For example, in fulfilment of the Customs Union Protocol, the customs procedures and documentation have been harmonised while a fully integrated and inter-connected customs system was established in the region. To fully harmonise the customs valuation procedures, the EAC has developed a uniform valuation manual to enable uniform interpretation and application of the community's customs valuation procedures.

Under the customs union protocol, the member states have agreed to harmonise their duty and tax exemptions and concession schemes. They have also agreed to progressively harmonise their policies and laws on domestic taxes so as to remove tax distortions and facilitate free movement of goods, services, and capital for the promotion of investment within the community. The member states have also been working on eliminating trade barriers and by 2013, they had eliminated 56 non-tariff barriers (NTB) as recorded by the EAC time-bound programme on elimination of the identified NTBs.¹

The intra-EAC trade has been increasing and in 2013, a growth of 6.1 percent to US\$5805.6mn was recorded from US\$5470.7mn in 2012. Kenya dominates the intra EAC trade as it accounts for about 31 percent of the total intra EAC trade. Similarly, Tanzania, Rwanda and Burundi recorded an increase in their intra EAC trade in 2013.²

The implication from this is that, generally, despite being cognisant of the need to protect local industries, the EAC market is generally open to competition. The increased trade flows, aided by the establishment of a common market, brings the need for competition oversight to ensure that an expanding market results in proliferation of anti-competitive practices, which would hurt both the economy and the people of the region.

Industrial Policy

The nature in which industrial policies are shaped is also critical as they can serve as tools to regulate competition in the market. Competition enhancement might yield limited results for example in sectors where government industrial policy focusses on creating national champions. In some Partner States, the industrial policies have been shaped in such a way that they complement competition policies. These include Burundi, where the industrial policy protects against activities or practices that:

- Might cause confusion with another's firm or its activities
- Might infringe on the reputation of others in the course of industrial activities
- Are misleading the public and
- Are disparagement of other's firms and their activities (Republic of Burundi, 2009).

This is also true for Tanzania, where the industrial policy is geared towards promoting an enabling environment by reducing market distortions, which hinder the smooth functioning of the market forces.

Industrial policies can also be used as tools to promote competition in some sectors, which would facilitate the attainment of competition policy objectives. For example, in Rwanda, the industrial policy provides sector specific support to boost domestic production and competitiveness. The Government of Kenya provides a wide range of tax incentives to businesses to attract investment. Tanzania programmes have over the years focussed on support programmes and incentives for domestic businesses. The Uganda Industrial Strategic plan 2011-2015 aims at providing a conducive policy environment for the private sector to take a lead in industrial development in Uganda.

Industrial policies are used as tools to balance between competition in a market and domestic industry protection. In Tanzania, the policy allows for selective industry protection within the agreements made under the World Trade Organisation (WTO).

Agricultural Policies/Agricultural Development Strategy

Agriculture is a priority area for EAC given that about 80 percent of EAC population depends on agriculture for their livelihoods. The development of the agriculture sector presents a great opportunity for poverty reduction in a sustainable manner. Agriculture contributes to

foreign exchange earnings, employment and provides raw materials for agro-based industries.

Policies at the regional-level on agriculture include the EAC Agriculture and Rural Development Policy and the EAC Food Security Action Plan (2010- 2015), which were put in place as strategies towards operationalisation of the agriculture related provisions of the EAC Treaty. Various measures are outlined for the purposes of improving food security, accelerating irrigation development, strengthening early warning systems against climatic hazards, strengthening agricultural research and training as well as improving trade infrastructure and utilities. Similarly, national agriculture development policies encourage private sector investment in agricultural production at all the supply levels.

The effectiveness of national and regional agricultural policies can be enhanced significantly through the implementation of the EAC Competition regime, as it will facilitate greater private sector participation in the agriculture sector. This would also make it easier to monitor possible anti-competitive market practices in the agriculture sector, along the entire agriculture supply chain from the inputs to the outputs markets.

Investment Policy

Investment policy has a direct bearing on competition as it influences the number of players in markets. According to existing literature and in practice, competition policy is considered as an important component of investment climate in an economy. This is on account of the fact that investors/firms investing in a market/economy are assured by the existence of a domestic competition policy (in that economy) of a level-playing field – thereby motivating them to invest in it. As also observed by the WTO (1998) a legal and administrative framework to guarantee sound competition can help set proper conditions for successful implementation of trade and investment policies.

The extent to which investment policies in the EAC Member States promote competition is thus critical as far as the EAC Competition regime implementation is concerned. The extent to which foreign investment is favoured or restricted would determine the nature of competition in the regional and national economies. Although there are few areas of domestic industry preference, the investment regimes in the five countries has generally seen the economies being opened up to foreign investors. Currently, the EAC partner states are also making efforts to strengthen and stabilise their national investment policies by improving the

administrative, regulatory and legal frameworks to ensure an investor enabling environment.

Based on the investment policies aimed at attracting FDI, there has been an increase in FDI flows in the Partner States. Uganda's FDI nearly doubled in 2012 to US\$1.721bn from 894mn in 2011 while Tanzania generated an increase of nearly 40 percent over the same period from US\$1.229bn to US\$1.706bn. These two had the highest performance in 2012 with respect to attracting investment from the rest of the world.³ Uganda's increased FDI attraction from the rest of the world can be attributed to the increased oil and gas exploration. The decline of nearly 30 percent in Kenya's FDI in 2012, can be mainly attributed to the political transition in the country, which had a lot of uncertainty attached to it. Such an upward trajectory in investment in the region can be further sustained through the implementation of the EAC competition regime.

Public Procurement Policy

The public sector is often a very significant source of demand for products and services especially in developing countries where the government remains the active participant in many markets. Thus, the manner in which public procurement policies are shaped is also critical in influencing the level of competition among private providers to public authorities in such markets. A pro-competitive public procurement regime is expected to facilitate greater (and more effective) participation of private providers in the public procurement process – a situation that can help governments save costs and obtain good quality goods and services. Within the context of the EAC region, the extent to which firms from one Partner State are able to provide services to the government of another Partner State will determine the level of competition in this market.

The public procurement policies for the EAC Partner States are generally based on principles that promote fair competition and equal treatment of competitors. The Burundi public procurement code prohibits contracting authorities from applying any public procurement measures or provisions that are based on nationality of the candidate that might constitute discrimination against nationals of other member states or regional organisation of any international agreement ratified by Burundi. The Kenya Public Procurement Policy (2009) has been based on a number of principles, among them being transparency and equal treatment of all parties involved in the process, with special reference to youth and women (PPOA, 2009).

The Rwanda Public Procurement Policy (2010) policy is governed by the fundamental principles of transparency, fair competition, clarity, accessibility, predictability, giving the best value for money, efficiency, fairness and accountability (MINECOFIN, 2010). The policy has categories of public procurement tenders open to nationals and international competitors. The Tanzania Public Procurement Policy (2011) principles give equal opportunity to all bidders and treat all the involved parties with fairness. It also gives preference to national goods, contractors and consultants by requiring them to be given a certain preference margin (Tanzania, 2011). The Uganda procurement policy (2004) is anchored on the principles of accountability, competitive and non-discriminatory equal treatment of all interested parties.

3

Cross-border Competition Concerns in the East Africa Community

The Need for a Regional Competition Law

As markets become more liberalised under the forces of trade and economic liberalisation as well as through regional trading arrangements, the regulation of firm behaviour becomes paramount. In the first place, competitive pressures within national borders lead to the possibility of anti-competitive behaviours as firms try to outwit each other to gain customer patronage. The opening up of borders resulting from regional integration has increased such competitive pressure as more firms, including multinational companies (MNCs), enter these markets. The idea of a regional market should be preceded by a situation where national authorities are able to adequately control firm behaviour within their markets. Thus, competition in the region can be better managed if all countries that are part of a regional integration arrangement (EAC in this case) have not only adopted Competition laws but also amassed significant expertise in its administration.

Since cross-border issues would involve more than one geographical location, successfully addressing any concerns would require cooperation and complementary roles among different countries and their authorities, possessing different levels of expertise. Turf wars would likely result, which could result in 'forum shopping' as economic agents try to have their cases presided by authorities that they perceive to be better suited to give them favourable judgements. This, usually, would be those regulators that have been captured. Thus the opening up of borders would also equally call for an independent regional law and authority to preside over cross-border concerns and complaints.

A regional Competition law would ensure that there is only one legislation that can curb anti-competitive conduct in the regional market – working in sync with national legislations. Given that the order to be given might end up having effects in other jurisdictions a regional authority will implement this law. More importantly, due to the big reach in terms of impact, witnesses or evidence could be located in another jurisdiction which a national competition authority might have limited powers in getting access.

Although there has been significant progress towards regional integration in the EAC, the same preparedness is not quite observed with respect to the control of anti-competitive practices. Regional integration is coming at a time when three countries in the EAC are not in a position to adequately regulate competition in their domestic markets.

It is within this context that this section on possible competition concerns arising from cross border trade with the EAC regional integration perspective has been prepared. It is an attempt at pointing out the possible dangers that could arise from the slow pace of competition reforms at the EAC level, especially given the weak competition culture prevailing in the member states as well as the ill-preparedness at the regional-level. It is important to understand that sans a strong enforcement culture, anti-competitive violations will remain speculative as it is difficult to prove them. Thus this section cannot be treated as evidently establishing anti-competitive practices in the EAC market. It borrows mostly from various reports and newspaper articles within the EAC to highlight possible areas which the EAC Competition Authority could zero in on when it eventually becomes ready.

Possible Source of Competition Concerns in the EAC Region

Although regional integration has proceeded at a relatively fast pace, there are several issues that make the EAC market susceptible to competition concerns. Inland transport costs are very high, which has created rigidities in the pace at which supply and demand dynamics could easily correct price volatility. Road transport, which accounts for approximately 95 percent of cargo volume in the COMESA-EAC-SADC region,⁴ is the most affected. Based on estimates by Trademark Southern Africa, a truck that takes three days to clear a border in the COMESA-EAC-SADC region would incur an additional cost of US\$600 to US\$1,200, which would be passed on to the consumer. The rigidities thus also act

as a shield against competition pressures from regional firms to some traditionally dominant domestic firms in the countries, a situation conducive to anti-competitive tendencies.

Exchange rate volatilities within the EAC members, have also protected dominant firms and relieved them of competitive pressures, which could have ensued with the opening up of trade. Anticipations about currency movements in the presence of sunk costs of entry and exit slows down both entry into and exit out of particular markets (Asprilla, Cadot and Duponchel, 2013). The high exchange rate volatilities within the EAC market thus is also a source of market rigidities and facilitates dominance.

The EAC region itself is also characterised by firms with significant market power. Asprilla, Cadot and Duponchel (2013) demonstrate that the EAC markets are still far from being fully competitive and integrated as market power is concentrated in some firms. Firms with market power operating within the market are able to operate outside competition pressures due to market rigidities. As a result, they are able to abuse their dominant positions to keep prices high, eroding the expectation of regional integration to help poor consumers, create jobs and promote investment.

The existence of NTBs within the EAC region is also a source for competition concerns as NTBs thwart free movement of products. Restrictions relating to rules of origin, import and export bans and costly import licenses create challenges to free trade and hence competition within the region. The Diagnostic Trade Integration Study (DTIS) report for Burundi by the World Bank (2012) reveals existence of a number of NTBs, within the EAC market (Box 1).

Box 1: Non-Tariff Barriers within the EAC region

- *Customs and administrative entry and passage procedures*
The non-tariff barriers include the number and effectiveness of institutions involved in customs procedures, arbitrary use of rules of origin and excessive verification of transit cargo. The complex, opaque and country-specific rules add to monetary costs and loss of time. The unequal treatment according to the country of origin of the goods and/or truck and opportunities for fraudulent behaviour also remain frequent.

Contd...

<ul style="list-style-type: none"> • <i>Government participation in trade and restrictive practices tolerated by it</i> These include ports and internal container freight station operations, delays at the numerous weighbridges and non-harmonisation of authorised weight per axle across countries within the EAC. • <i>Distribution restrictions</i> These exist in the form of multiple police roadblocks causing delays and rent extortion and prohibition on transportation of locally produced goods by returning trucks. • <i>Specific limitations</i> The EAC market is also characterised by a complex use of immigration and visa procedures and business registration making it difficult for business. • <i>Technical barriers to trade and sanitary and phyto-sanitary measures</i>
<p><i>Source: World Bank (2012)</i></p>

The existence of NTBs makes it difficult for foreign firms to freely compete with domestic players, especially those with significant market power.

The role of MNCs in the EAC region is also a potential source of concern, especially if the MNCs have a history of competition violations elsewhere. Given the dearth of competition law expertise in some EAC countries, consumers and competing firms would mostly be at the mercy of such MNCs. One area of concern is the type of distribution arrangements that the MNCs enter into with local subsidiary or distributor firms, which results in dominance. The link to the MNCs could easily result in dominance due to the natural advantages the companies get in comparison to domestic companies. It is often very difficult for domestic companies to reproduce the infrastructure and means to compete effectively with the MNCs due to working capital and technological challenges.

Sometimes MNCs find it cheaper to use domestic distribution agents in the developing countries. This would therefore imply that the agent in

the domestic country would get an opportunity of distributing commodities or services not locally produced due to the relationship with the MNCs. However, as a way of ensuring proper distribution of services and products, MNCs have to reach distribution agreements with the agents, which are also intended to ensure that proper conduct is followed during the distribution process.

There are different types of distribution agreements that can be entered into between the MNCs and the local distribution agents. One example is known as exclusive distributorship, where the services and products can only be supplied to the agent in a defined territory, who has to agree not to appoint other distributors or sell to other customers outside the defined territory. The MNC can also appoint a sole distributor within a territory, although the MNC would also reserve the right to supply the goods directly to end users. In addition to these two types, the supplier and the agent can also enter into a non-exclusive distributorship arrangement, where the MNC has the freedom of selling directly to customers as well as to appoint other distributors with the same territory.

While exclusive distribution agreements, just like other vertical agreements, are not *per se* anti-competitive, there often arise problems when they are used by the parties to engage in abusive behaviour, with negative impacts on other competing firms as well as the consuming public. The nature of such arrangements within the EAC could also be a source of market power within the region.

Thus the nature of the EAC market makes it inevitable that cross-border competition concerns would develop, with negative effects being felt among consumers in different markets. It is also important to appreciate that there are already a lot of developments that are taking place in the region, with many alleged anti-competitive acts going unchecked due to the absence of a regional competition regulator. In addition, the absence of competition authorities in some jurisdictions also makes it easy for firms to engage in anti-competitive conduct and propagate such a culture within the industry — which affects the economy at large in the long run. The nature of some markets is already a cause for concern, if reports and articles over the recent years are anything to go by.

Select Sectors for Commissioning Market Inquiry

Although generally many markets could have competition concerns, there have been issues raised in the breweries, cement, mobile telecommunications and banking sector. These are sectors where either

allegations of anti-competitive behaviour have been alleged or the nature of competition is likely to be a breeding ground for anti-competitive practices. The sectors are discussed below:

Breweries Sector

One of the sectors with a huge presence of MNCs in the EAC is the breweries sector. Taking advantage of the huge potential for growth in beer sales across the EAC, the leading players have been engaging in different tactics aimed at increasing their market shares at the expense of their rivals. Global giants in the breweries sector, such as SABMiller, Diageo and Heineken all have a presence in at least one of the EAC countries through significant shareholding in some firms, which are dominant in their own countries. This has created some linkages among players operating in different countries, creating regional dominance and positions of strength, which can be abused if market conditions permit.

Among the most active is East African Breweries Limited (EABL), a holding company based in Kenya controlled by Diageo. EABL has subsidiaries in Kenya, Tanzania and Uganda. In Tanzania, EABL has a 51 percent shareholding in Serengeti Breweries Limited, the second largest beer company in Tanzania, having acquired the stake in 2010. In Uganda, EABL owns Uganda Breweries Limited, the leading brewer in Uganda since it began operations in 1946. In Kenya, the beer company also owns Kenya Breweries Limited, which has also been a leading brewer in Kenya since it began operations in 1922.

The Heineken Group also participates in the region through subsidiary companies as well as distribution companies. In Rwanda, Heineken owns Brasseries et Limonadières du Rwanda (Bralirwa) which has a market share of about 75 percent. In Burundi, Heineken also has a majority stake in Brasseries et Limonaderies du Burundi (Brarudi), the leading player in the Burundi beer market. The company also owns Heineken Tanzania Limited, Heineken Uganda Limited and operates in Kenya through Heineken East Africa Import Company Limited. Thus the company has a presence in all EAC countries.

SABMiller owns Tanzania Breweries Ltd, the oldest brewing company in Tanzania, which has been able to maintain its position as the largest brewer in the country with a 74 percent market share. SABMiller entered the Ugandan market in 1997 through its investment in Nile Breweries Ltd., established in 1951 and is the largest brewer in Uganda with a market share of about 56 percent. In Kenya, the company also owns

Crown Beverages Ltd. Kenya, which was acquired by SABMiller in 2011 and already launched several beer brands in the Kenyan market.

This generally reflects that competition within the region is already intense. However, given the poor competition implementation culture in the region, there are possibilities of anti-competitive practices, if the past history of rivalry among the players is anything to go by.

In South Africa, SABMiller has already been taken to task by the South Africa Competition Commission on allegations of abuse of dominance. Between 2004 and 2007, complaints were received from wholesalers alleging abuse of dominance related to price discrimination and unfair resale price management. Some of the cases are still pending before the Commission and the Tribunal.⁵ If such allegations can surface in the area, which arguably has Africa's most sound expertise in competition enforcement, they can also be happening in countries without competition laws.

In Tanzania, the Fair Competition Commission (FCC) has handled competition cases involving Tanzania Breweries and Serengeti Breweries, which are both subsidiary of MNCs. In 2010, the FCC imposed a heavy fine of five percent of turnover, which amounted to about TSH27bn (US\$18mn, approx.) on Tanzania Breweries for conduct relating to abuse of dominance on Serengeti Breweries. Although the courts later set aside the ruling on the basis that the FCC was not properly constituted when it presided the case, there is little on the ground to suggest that there were no competition issues at play.

In 2007, Heineken was fined a record fee of •219mn by the European Commission within the European Union market for operating a cartel with other brewers.⁶ In 2012, SABMiller also raised the alarm in Mexico, alleging that Heineken was among the beer companies blocking consumer choice in Mexico with inducements to businesses to thwart rival brewers.⁷ In Rwanda, there were widespread allegations that Bralirwa was involved in anticompetitive tendencies aimed at ensuring that *Brasserie des Collines* (BMC), who were a new entrant, fails to find any market. The allegations included exclusive distribution agreements with retail operators who were not allowed to have BMC products at their operating places.

Kenya Breweries has also found itself being investigated by the Monopolies and Prices Commission of Kenya for conduct related to vertical restraints, where competitors felt that the dominant firm was trying to foreclose the market to them through vertical arrangements.⁸ Kenya Breweries was alleged to have entered into arrangements with its distributors, which compelled the latter not to stock liquor from competing firms. On one occasion, a case arose between Kenyan Breweries and

Castle Breweries where the former was accused of having contracted farmers and restricted them from selling their barley to Castle Breweries.

It is the same firms, who are dominant in different countries of the EAC market, who are currently involved in intense competition for the regional market. If the same firms were seen to have tried to cheat the system in some areas with strong competition enforcement, chances are high that they could be engaged in the same conduct in the EAC market. However, since there are no laws in some countries, such conduct would not be an offense as there is no law being broken. There are huge incentives for making huge profits at the expense of weaker firms, as anti-competitive tendencies can only become illegal if there is a competition law in the area of operation.

Cement Market

Another sector, which has generated interest among big corporations in the EAC market is the cement sector. Subsidiary companies of MNCs with presence in more than one country in the EAC have been engaged in fierce price competition, which can easily breed anti-competitive tendencies. Regional and global giants that are operating in the cement market in the EAC region include Lafarge, Holcim, Heidelberg and Dangote Cement. However, the Swiss cement group, Holcim and its French rival, Lafarge merged recently in April 2014 to create Lafarge Holcim, a dominant supplier of cement for concrete in the global construction industry. The effects of the merger are yet to be seen in the EAC market, especially in areas where the two both had some presence.

In East Africa, Lafarge operates through subsidiary companies in Kenya, Uganda and Tanzania. In Kenya, it operates through Bamburi Cement Limited, which is the leading player with a market share of about 60 percent.⁹ In Tanzania, the global giant operates through Mbeya Tanzania Cement, while in Uganda, it operates through Hima Cement LTD, the second largest cement producer in the country.

In addition to Lafarge, Tanzania has two other major producers associated with European multinationals; Heidelberg, which owns Tanzania Portland Cement and Holcim, which owns Tanga Cement Company. Thus the global merger of Lafarge and Holcim is going to have a direct impact on the Tanzania market as two large producers are subsidiary firms. The other EAC member countries also have big cement manufacturers, although these do not necessarily have cross-border presence.

The recent entrance of Dangote Cement into the EAC market has also been an addition of a regional giant into the competition equation. Reports indicate that the regional giant will set up two plants in Rwanda, three in Tanzania, one in Burundi and another in Uganda.¹⁰ The cement market is thus expected to become a fiercely contested market due to the presence of global players, to the ultimate benefit of consumers, especially since prices are expected to take a knock.

However, a look at the past behaviour of some of these global giants would also reveal that there is reason to fear as far as anti-competitive practices are concerned. Recently, in May 2014, Holcim was among the six cement makers, which were reported to have been fined a combined US\$1.4bn for alleged collusion to set prices and dividing up clients in Brazil. What is also worrying is that its partner, Lafarge, was only excluded from the fines because it reached an agreement with the Brazilian Competition Authority (CADE) in 2007 by paying 43mn *reais* in fines and agreeing to cease any anti-competition practice. Lafarge has also had brushes with the competition law in many other occasions in other jurisdictions.

The conduct of Dangote in Nigeria has also been the subject of discussion, with stakeholders accusing the firm of anti-competitive behaviour, especially exploitative abuse of dominance against consumers. Excessive pricing is alleged, based on the fact that the price of cement in Nigeria is said to be four times higher than the global price. It is also alleged that Dangote Cements threatened to shut down its Obajana plant if the government continued to allow another competitor (Ibeto Group) to keep importing cement into the country.¹¹

A recent report by the Africa Competition Forum also points out at possible competition concerns in the EAC region. Cement companies have a history of vertical and horizontal relationships, which reinforced their position. These include jointly tying-up critical supplies of materials, such as fly ash and slag, while also having joint shareholding in the smaller regional producers. These could be breeding ground for anti-competitive tendencies. The role of the East African Cement Producers Association (EACPA) is also a possible concern as this could be a platform being used for collusion at the regional level. This could be evident from the fact that the firms appear to export into certain countries and not others, which could be a market sharing strategy (ACF, 2014).

The fact that firms with a known history of competition violations are now competing fiercely for market shares in a region, which has a poor competition culture is thus very worrying. There are several smaller

cement firms in the EAC member states who are presently at the mercy of the bigger firms who have violated competition laws before. If they could engage in anti-competitive conduct in regimes with competition laws, it would be expecting too much from them to respect competitors of countries without a law to enforce their behaviour. A history of cartelisation could also see inflated prices for cement in the region if smaller firms are whipped into line through predation threats. This calls for vigilance on the part of existing competition authorities while the process of establishing regional and national competition laws also needs enhancing.

Banking Sector

One of the sectors, which have seen huge strides being made in regional integration is the banking sector. Banks are setting up in all markets in East Africa as they try to tap into the largely unbanked consumers. Due to the benefits of increased regional integration and technological innovation, those banks that are among the top performers in East Africa are registering respectable profits from their cross-border holdings. Competition among banks with the EAC region appears to be mainly driven by the quest to be the first to develop a footprint across the region. While there is still a huge pool of unbanked consumers, such type of competition is likely to result in the fight for existing rather than new consumers, as it is difficult to anchor regional presence on unbanked consumers.

Although many countries in the EAC market have big and dominant banks within the national markets, it is mostly Kenyan banks that are a dominant force in the regional market. The country dominates the region's top thirty banks, as nineteen of them based in Nairobi while Kenya's network in the region is by far the largest, with about 43 banks and a total balance sheet of KSh2.5trn (US\$28.6bn) in June 2013.¹² The nature of competition is such that some of these regional banks are now bigger than some of the biggest banks within the national boundaries. This huge influence from regional banks would also see their operation tendencies being imposed in the national economies, due to their dominance.

Foreign-owned banks in general also have a strong presence in the EAC banking sector, controlling more than half the total assets of the banking sectors in Uganda (79 percent), Rwanda (54 percent), Tanzania (51 percent), Kenya (45 percent) and Burundi (41 percent) (Sanya and Gaertner, 2012). These foreign owned banks have a natural advantage

over local banks in that they have access to lower cost financing from their parent companies and thus have superior technology.

Based on various measures, the degree of competition is however still low, reflecting dominance of some leading banks within the local markets. The Lerner index, which is the difference between price and marginal cost is a measure normally used to depict how high the level of competition is in the market. Higher values of the index imply less competition. The index has increased over time in Kenya, Rwanda, Tanzania and Uganda, showing that competition has not improved over time, as some banks become more dominant.

The Lerner Index for the four EAC countries is between 29 percent and 36 percent, implying that banks price between 29 percent and 36 percent above marginal costs (Sanya and Gaertner, 2012). Based on the Panzar and Rosse H-statistic, Sanya and Gaertner, (2012) also demonstrate that the level of competition in the banking sector for the four countries is monopolistic competition. If the H-statistic is less than zero, that would be reflective of a monopoly; if it is between zero and unit that would reflect monopolistic competition, with a value of unit reflecting perfect competition. The H-statistic for the four EAC countries was found to vary between 0.24 (Rwanda) and 0.60 (Kenya), implying a monopolistic competition in the EAC banking sector. The study also established that regulatory-induced barriers to competition also exist within the EAC banking sector, which calls for a competition culture.

There is a general feeling among consumers and other stakeholders that the high-level of profits that banks enjoy, which are a result of wide gaps between the interest rates on deposits and loans could be a reflection of collusion between banks. This allegation is difficult to shake off given the highly concentrated market structure as well as the fact that banks are able to charge high interest rates without fear that competitors can charge lower rates. The uniform rates that are always used as a base rate in dealing with customers could also reflect collusion. The general interest rate on loans quoted by banks at enquiry (this is normally the rate charged for risky customers who have no history with the banks) is normally in the same range across banks.

Given that Kenyan banks dominate the region, their conduct in Kenya can end up being a common practice in the region. A recent study by Kamau and Were (2013) actually establishes that the source of superior performance in the Kenyan banking sector is not efficiency but rather issues related to the market structure as well as collusive power. In January 2014, the Competition Authority of Kenya was reported to have initiated

a study into the Kenyan banking sector to interrogate issues contributing to high interest rates in the local market and to ensure consumers are protected from unethical trade practices.¹³ Consumers in Kenya attribute the high interest rates to collusion by major banks, leading to a high cost of borrowing in the local market. This is not a pleasing scenario, as this implies that there is a possibility that banks, which are potential instigators of collusive behaviour are now dominating the regional economy.

Mobile Telecommunications Market

Another sector, which has already generated a lot of interest as far as competition in the EAC region is concerned, is the mobile telecommunications sector. Already there are a number of service providers who have a presence in more than one country. These include Celtel, which is a service provider in Kenya, Tanzania and Uganda. Safaricom is also another provider with a host of products and services in the EAC, while MTN also provides services in Uganda and Rwanda.

One biggest area of concern, which can have competition connotations, is the issue of roaming across the EAC countries. Telecom operators in the region are all fighting to negotiate regional free-roaming zone arrangements, which have seen many regional players engaged in talks. Safaricom, which is Kenya's biggest mobile operator, was recently reported to be in talks with MTN Uganda and Vodacom of Tanzania to help its launch of borderless services in order to facilitate regional expansion. However, this took pace barely two weeks after Celtel, with a presence in the three EACs, had also launched a common service for the region, a move which had been seen as a 'coup on Safaricom' in the race for regional clients.¹⁴

The race for roaming arrangements has also been taking place in Rwanda, where MTN Rwanda and Safaricom were also reported to be negotiating the free roaming arrangements.¹⁵ While this can be regarded as an arrangement that is benefiting consumers, what is worrying is the fact that players who are competing in the same market in the region are also negotiating competition arrangements without any checks and balances due to the absence of a regional competition authority. This could be breeding ground for collusive practices, including those relating to tariff charges.

Some of these players have also been reported to be engaging in anticompetitive tendencies against their competitors. For example, there has already been some competition wars in the mobile money transfer market, pitting Safaricom and Airtel. Airtel joined forces with Equity

Bank to launch a mobile banking product, M-KESHO in July 2014, which is similar to the popular Safaricom product, M-Pesa. Airtel is reported to have lodged a complaint with the Competition Authority of Kenya complaining about Safaricom's dominance in the market which makes it impossible for Kenyan consumers to have a choice in operators. The Competition Authority of Kenya was reported to be investigating the case as well as scrutinising the telecommunications market in general for possible abuses of dominance¹⁶. Given that these players being investigated in Kenya are also present in other jurisdiction is very worrying, as there is no one to make similar investigations due to the absence of a competition law.

Air Transport Industry

Another sector that has seen concerns being raised, especially following intense competition, is the air transport sector. Although many countries in East Africa have national flagship airlines, it is mostly Ethiopian and Kenya Airways that are more competitive. However, these also face significant competition from other regional and international carriers. National carriers include Rwanda Airways, Air Burundi and Air Tanzania, while Kenyan Airways and Air Uganda are largely privately owned. In addition, there are also other carriers within the member states, which also tend to offer some level of competition within the region, which include Precision Air. South Africa Airways (SAA) with significant competition in the EAC region.

Competition concerns from the airline industry largely stem from the fact that at the global-level, the carriers have deepened their global network integration through the alliance system. Many players in the region belong to the three alliances at the global-level, namely Star Alliance, SkyTeam and Oneworld. The alliances include tactical agreements typically involving only two carriers and covering a limited number of routes, with the principal objective of providing connectivity to each carrier's respective networks¹⁷. Members of the alliances thus coordinate behaviour, which at the basic involves standard code-share agreements, cooperation on frequent flier programmes and lounge access, but can also extend to higher levels¹⁸.

In the region, Star Alliance members include Egypt Air, Ethiopian Airways and South African Airways. Kenyan Airways is a member of the SkyTeam. The implication from this is that the behaviour of the carriers would be influenced by their own decisions as well as the decisions made

at group level. The alliance system is also worrying in that carriers, which are supposed to be competing for customers are actually sitting down to discuss common strategies, an issue which any competition authority would want to assess.

In countries with strong competition enforcement regimes, the air carriers have to apply to the competition authority for exemption before they are allowed to join the alliance of competitors. For example, in 2006, SAA applied to the Competition Commission of South Africa for an exemption to join the Star Alliance. SAA sought the exemption for a period of ten years, justifying the need to cooperate with competitors on the fact that it was required for the maintenance or promotion of exports; one of the criteria allowed under the Competition Act, 1998. After conducting its investigation, the Commission granted SAA an exemption for a period of five years on the basis that the exemption would indeed maintain or promote exports (OECD, 2014). In Kenya, the Kenya Competition Authority also had to authorise the partnership between Kenya Airways and KLM/Air France, which involves coordinating schedules, setting fares and using joint measures to save cost through code share agreements, scheduling alignments and where necessary adjusting capacity on routes¹⁹.

Some of the players involved in the EAC airline market have also had some brushes with the Competition law in different jurisdictions. Recently, a small-scale regional airline, Fly540 was reported to be considering petitioning the Competition Authority of Kenya to investigate Kenya Airways' subsidiary, JamboJet, for anti-competitive behaviour. It was felt that the practice of Kenyan Airways' subsidiary was tantamount to predatory pricing in the domestic market, as it was offering tickets for one-way flights from Nairobi to Kisumu, Mombasa and Eldoret at less than half of the cost of offered by Fly540 and its parent company, Kenya Airways, on the same routes²⁰. Given the mismatch in prices between Kenyan Airways and JamboJet, there are possibilities that the domestic prices were just meant to take business from other carriers and remove them from the market, which would enable JamboJet to recover losses through higher prices.

SAA has also been found to have abused its dominant position in the domestic market. In July 2005 the Competition Tribunal fined SAA R45m, which was a record fine under the Competition Act 1998 for abuse of dominance related to the use of loyalty rebates with travel agents. Another similar case resurfaced in 2009.

The examples also demonstrate that collusion and abuse of dominance fears in the region is realistic. The fact that anti-competitive practices are seen to exist in countries with a competition enforcement culture is a cause for concern for other countries and on the overall for the EAC region, which does not have expertise in competition enforcement.

4

Challenges to the Implementation of the Competition Act at the Regional-level

Stakeholder consultations have shown that there are a number of different types of challenges impeding the timely implementation of the EAC Competition Act. These challenges include institutional challenges related to the establishment of national competition authorities and their capacity to handle competition issues; differences among the five EAC country economies; and political economy challenges, such as discussions arising from the different levels of development in the five member states. Each of these challenges will be discussed in more detail in the subsequent sections.

Institutional Challenges

One of the main obstacles towards the effective implementation of the regional Competition law effectively is the reluctance by some of the Partner States to have functional competition authorities in place. A clear division of jurisdiction of the regional and national competition authorities has to be devised and understood by all relevant authorities, which according to some stakeholders is not yet the case. In order for regional rulings on anti-competitive practices on the national-level by the regional competition authority to be effectively monitored, a national enforcement body would have to be set up with sufficient capacity to understand competition issues and to implement the law. National and regional authorities would also need to work in close cooperation. Fortunately, there are some experiences both with Africa (COMESA) and outside (EU) for EAC to derive lessons on this front.

The EAC Competition Act provides that the East Africa Competition Authority shall comprise five Commissioners, one from each Partner State. The Act also provides for appointment of a Registrar who will be responsible for the day-to-day management of the competition authority.

The Regulations provide that the regional competition authority may request the competent national authority of a partner state to undertake the investigation into competition matters and provide a report to the regional authority. Such investigation shall be conducted in accordance with the national laws of the Partner State. If so requested by the Regional Competition Authority or by the competent authority of a Partner State within whose territory the investigation is to be conducted, officials and other accompanying persons authorised by the Regional Authority may assist the officials of the competent national authority concerned. Such officials shall be issued with authorisations by the competent authority of a Partner State, which shall be produced whenever demanded in the course of an investigation. Thus competition authorities of Partner States are critical institutions in the implementation of the regional competition authority.

It is from this institutional structure laid out in the EAC Competition Act and EAC Competition Regulations, that some stakeholders have argued that the main challenge to the operationalisation of the EAC Competition Act is that not all EAC member states have a national Competition law and a Competition authority in place. It was suggested that if the EAC Competition Authority would start operating and address cross-border competition concerns prior to the establishment of independent national competition authorities in all partner states. Partner States without a dedicated authority would be urged to create a specialised desk dealing with competition. The staff dedicated to competition issues would then be trained in competition policy and law to assist the EAC Authority to handle regional competition matters.

This is connected to the next challenge that was raised by stakeholders concerning the institutional enforcement structure for the EAC Competition Act. It was argued that even though there is considerable capacity at the national level to set up institutional structures for the implementation of EAC Competition law, there is still considerable scope for capacity development at the national-level in all the EAC Partner States for effective implementation. Although Kenya and Tanzania have sufficient experience in implementation competition policies and laws, the remaining EAC states require significant capacity building to be able to fulfil their expectations under the EAC Competition Act. Therefore, countries like Kenya and Tanzania should play the role of a ‘big brother’

in strengthening the institutional capacity in other member states to deal with competition issues/cases.

Some stakeholders have pointed out the lack of finance to establish the EAC Competition Authority, which Partner States must provide. The relatively low motivation of providing the funding for the setting up of the authority could be attributed to the decision-makers' failure to appreciate the importance of competition regulation in establishing an effective Common Market regime in the EAC.

Differences among EAC Country Economies

Another challenge to the implementation of EAC Competition law is the diverging level of development in the five EAC member states. Some stakeholders have pointed out that due to the possibility of potential harm to local industries through opening up national markets to foreign competition, the political motivation to push for the competition agenda has lacked sincerity and commitment. The political will to harmonise national competition laws with the EAC Competition law also appears to be missing. In the same context, some stakeholders have argued that the provision for protectionism in some national policies is a key challenge in the alignment of national and regional competition laws. Other similar challenges include the provision of state subsidies and tax breaks for selected national industries and procurement policies that provide preferential treatment to certain groups of people or specific firms. Preferential treatment and state aid to selected companies could lead to market distortions by artificially lowering prices through government support to specific national firms.

However depending on the national level of development, adjustments and exceptions should be provided for in the legal competition framework in order to address each member states' concerns concerning their level of economic development. This is principally because the EAC Partner States are at different stages of economic development and of implementing national policies and legislation.

Furthermore, the stakeholders were concerned about the delayed review of the Partner States' national competition laws, which is vital for determining the areas of approximation. There was also a concern on the delay by the Partner States to submit proposals/comments on the proposed amendments to the EAC Competition Act, 2006 to facilitate a comprehensive review of the Act and Partner States national competition Laws/Bills.

Political Economy Challenges

In addition to the legal alignment and institutional challenges outlined above, there are political economy challenges to the implementation of EAC competition law. According to interviewed stakeholders, a major challenge in the implementation of the EAC Competition Act is the lack of political will among decision makers to advance the competition agenda. This might be due to vested interests that are found among some of high-level government personnel who are expected to move the process of the competition law implementation forward. These vested interests may stem from personal business ownership, which may benefit from a distorted market regime without a level-playing field for all private sector operators. Therefore, officials may only show limited interest in the enforcement of Competition policy and law if it will hamper their personal business operations.

In order to accelerate the implementation of the regional Competition policy and law, political will is required at the EAC-level to facilitate for the same.

According to some stakeholders, it appears that the partner states are not ready for regional surveillance especially when it comes to issues of national procurement policy. Given that public procurement is one of the key vehicles for national economic development in most EAC economies, motivation might be low among national stakeholders to create a level-playing field for national, regional and international companies to operate in the regional market under fair competition conditions. This might be due to the various levels of economic and industrial development that characterise EAC member states.

Additionally, there is low awareness among key stakeholders at national and regional-levels to advocate for timely implementation of the regional competition Act. Without appreciation of the benefits of a comprehensive regional competition regime, national stakeholders would lack interest in implementing the EAC Competition Act. However, based on the information provided by stakeholders, the business community supports the implementation of the law and would prefer to have the process fast tracked. This is because the private sector welcomes the fact that there will be a grievance mechanism for anti-competitive practices in the EAC in place at the regional-level. A properly enforced competition regime would create predictability of the market conditions and standards, which is essential for successful investment across borders.

5

Dealing with Cross-border Competition Concerns in the EAC

Since cross-border competition concerns involve more than one country, there are several disadvantages in having national competition laws deal with them. Firstly, national competition laws lack the adequacy and the necessary jurisdiction of dealing with anti-competitive practices of foreign companies. Although imports affect domestic competition, the exporters cannot be regulated by a national competition authority adequately as they are domiciled outside their jurisdictions.

Although, there is a principle of ‘effects doctrine’ that can be used by national authorities of Partner States to take action against acts of foreign firms that can have implications on the country. This can be operationalised better if there is a provision on ‘extra-territoriality’ in the national competition law.

Secondly, some global mergers involving multinational corporations would see the same transaction being investigated by national competition authorities in different countries. National competition authorities should also apply the same factors; hence the same decisions would be expected. However, due to different levels of competencies, as well as different economic conditions, different decisions could result.

For example, the global *Coca-Cola/ Cadbury-Schweppes merger* affected virtually all the COMESA member States but it was only examined by two competition authorities in the region; Zimbabwe and Zambia. These two competition authorities imposed conditions on approval, which resulted in significant changes to the originally proposed transaction as a way of mitigating competition effects of the merger. In rest of the countries, no investigations were done.

A merger involving BAT and Rothmans was also investigated in Zimbabwe and Zambia, but this resulted in different conditions even

though the transaction was similar. In Zimbabwe, the merger was approved with conditions of both a structural (partial divestiture aimed at facilitating new entrants into the monopolised cigarette making industry) and behavioural nature (undertaking by the merged party not to increase cigarette prices for a specific period of time). The Zambian authority unconditionally approved the merger.

The implication therefore, is that each competition authority has its own human, financial and legislative challenges, which causes limitations in executing its mandate. Such weaknesses could be replicated at regional-level creating a multiplicity of sub-optimal decisions. The adoption of a regional Competition law and policy that applies to all the member States will thus be instrumental in (consistently) alleviating the jurisdictional problems of national competition authorities. In addition, a regional competition authority would also allow national authorities to specialise on national issues only.

It is on this basis that the regional competition authorities have been established in different regions of the world. In COMESA, the COMESA Competition Regulations and Competition Rules were adopted in 2004, although its enforcement commenced towards the end of 2012. Two competition bodies were established for the purposes of implementing the regional law; the COMESA Competition Commission (CCC), responsible for investigating anti-competitive practices and reviewing merger control filings, and the Board of Commissioners, which hears appeals against decisions of the CCC. CCC has primary jurisdiction over all matters with a regional dimension. The CCC has jurisdiction to take enforcement action against anti-competitive practices and behaviour with a cross-border or regional dimension. It is empowered to impose fines and take such other action as is necessary to address the illegal conduct.

The most advanced regional system of competition rules is the European Union (EU) regional Competition law. This focusses on regulating restrictive business practices, public undertakings, undertakings granted special or exclusive rights, and subsidies. The rules apply to practices affecting trade between member States, and this is true even if such practices occur within a single EU country.

The law provides for:

- Coexistence between national and EU competition laws, subject to the primacy of the EU law
- A system for allocating competence among EU and national competition authorities and courts to balance uniformity of the competition regime within the EU
- Cooperation in the investigation or evaluation practices

- Exchange of documents (including confidential information) and
- Communication of opinions to countries on draft decisions for comments.

Virtually all other regional trade agreements concluded by the EU with other countries or regions include competition policy provisions.

In a similar manner, the EAC region has also taken some strides in ensuring that a regional competition body is in place by passing the regional competition legislation. The EAC Competition Act, 2006 gives the EAC Competition Authority power over cross-border anti-competitive practices. It regulates all the three areas of competition enforcement — abuse of dominance; anti-competitive agreements and anti-competitive mergers and acquisitions. The regional law also regulates subsidies given to domestic firms in the member states by limiting the powers of EAC Partner States to unilaterally impose trade tilting subsidies.

Under Section 4 of the EAC Act, the regional law applies to all transactions that have a cross-border effect, except the following activities:

- Conduct relating to individual consumers
- Collective industrial bargaining
- Sovereign activities of the Partner States and
- Restraints on competition arising from a Partner State's regulation of a particular sector or industry if the anti-competitive conduct is needed in such regulation.

Section 5 of the EAC Competition law regulates anti-competitive agreements. Under sections 5 (2) and 5(3), the following practices are prohibited;

- Collusion by competitors to fix prices
- Collusive tendering and bid rigging
- Collusive market sharing or customer allocation
- Quantitative restraints on investment, output, sales or inputs
- Barring competitors from access to a resource or association essential for competition
- Concerted practices necessary for the movement of goods within the EAC and
- Concerted practices that restrict imports or exports into the region that have anti-competitive effects within the EAC.

Under Section 6, there are exemptions through which practices that involve agreements might be allowed to operate provided that the combined market share of the parties involved does not exceed 20 percent of the relevant market. These include the following:

- Agreements between parties whose combined market share does not exceed 10 percent of the relevant market
- Joint research and development
- Specialisation of production or distribution
- Standardisation of products or services and
- Practices whose objectives lead to improvement in production or distribution, whose benefits outweigh the negative associated with the anti-competitive conduct in the opinion of the EAC Competition Authority.

Such exemptions are only granted by the Competition Authority following application for authorisation by the parties concerned.

Section 8 of the EAC Competition Act prohibits abuse of dominance. Prohibited practices include:

- Excessive pricing and predatory pricing
- Limiting production, development or innovation to prejudice consumers
- Discriminate between consumers or suppliers
- Price squeezing
- Cross-subsidisation
- Refusal to deal
- Tying arrangements and
- Refusal access to an essential facility.

There is only one ground for exempting abuse of dominance under the law, which is when undertakings on which small or medium-sized enterprises are involved.

Vertical agreements are prohibited under Section 10 of the EAC Competition law. Practices that are prohibited include the following:

- The manufacturer fixing resale prices or resale conditions to the retailer or downstream purchaser
- Customers or competitors being foreclosed from access to sources of supply or from access to outlets
- Movement of goods or services between different geographical areas is restricted and
- An intellectual property right is used in ways that go beyond its legal protection.

The regional law also has a focus on mergers and acquisitions. All parties to a merger in the EAC, which has some cross-border effects, should seek authority from the Competition Authority as per Section 13 of the EAC Competition Act. Mergers and acquisitions that strengthen the dominant position or that substantially lessen competition in the relevant market are prohibited. Issues to be considered in merger assessment include the market structure, control of essential facility, alternative suppliers available and consumer power. The decision of the Competition Authority to reject a merger can be appealed to the Council of Ministers established under Article 9 of the EAC Treaty.

The EAC Competition Act also regulates subsidies by requiring that partner States notify the Competition Authority before they give subsidies, which distort or threaten to distort competition within the EAC market. Prohibited subsidies include the following:

- Subsidies that promote exports or imports between Partner States and
- Subsidies granted on the basis of nationality or residency in country giving the subsidy.

There are, however, subsidies that are exempted and member states are allowed to use them. These include:

- Those given to consumers to promote social services, promotion of Small Scale Enterprises (SMEs) and promotion of less developed regions
- Subsidies given for research and development and for the promotion of food security
- Given for the protection of the environment or the conservation of the cultural heritage and
- Given for the financing of a public sector and for damages caused by natural disasters.

Partner States are mandated to mutually cooperate with the EAC competition authority. Decisions of the EAC Competition authority are binding upon Partner States' authorities. In the event that national Competition authorities are investigating a case and then the regional authority begins an investigation over the same or similar case, national competition authorities should stop until the regional competition authority has finalised the case. Issues within the scope of the regional authority have to be referred to it by the national Competition authorities. Where there are disagreements between the regional and national authorities, this would be referred to the EAC Court of Justice.

The EAC competition framework is generally comparable to that of COMESA as well as the European Commission. What is just needed is to ensure that the level of expertise needed to enforce the law is built. It is, however, important that Partner States gain the necessary level of confidence in the EAC to give their buy-in. Building expertise within the EAC Competition Authority should thus be given priority once the regional body has been established.

6

Conclusions and Recommendations for the Acceleration of Implementation of EAC Competition Policy and Law

The EAC region is prone to anti-competitive behaviour as is various other regions across the developing world. This is not only because of the absence of competition laws in some member states as well as at the regional-level, but also because regional integration has also ushered in regional players with some experience in dealing with competition laws in their areas of origin. The cut-throat competition in the breweries, cement, banking, telecommunications and airlines sectors is likely to usher in significant anti-competitive behaviour as these players have already seen how profitable operating outside the purview of the Competition law can be. The region desperately needs a cadre of competition law advocates among both the state and non-state actors to raise the ante on the need for competition laws.

There is reason to believe that anticompetitive tendencies are actually taking place in the region even though these have not yet been investigated and thus cannot be proved. Without a competition law, any anti-competitive behaviour in the EAC market in those countries without a Competition law is legal, as this would become illegal only if there is a law against it. However, the negative impact in terms of consumer welfare as well as weaker firms is blind to whether or not the law exists. This points out to the need to ensure that the competition laws in the region are given priority in line with other regional integration issues, which have proceeded at fast pace.

While there have been attempts to have a competition law implemented at the regional-level, this has not gained much traction due to the absence of competition laws in some jurisdictions. Thus the push to ensure that there are competition laws as well as a strong enforcement culture in those countries that are yet to fully enforce them should also be seen as a tool for pressure towards regional competition laws. It is not likely that governments that are yet to fully appreciate the need for competition laws in their own countries would be able to see the need for a competition law at the regional-level. Thus advocacy efforts aimed at showcasing the benefits from competition reforms need to be enhanced in the EAC market.

Key stakeholders have recommended that the EAC Partner States should implement the decisions of the SCTIFI of June 2013, urging Partner States that have not enacted competition laws and/or constituted competition authorities to do so. The Partner States should also harmonise their respective national laws with the regional law. Furthermore, the EAC Secretariat needs to facilitate the implementation of the adopted roadmap towards implementation of the EAC Competition Act. Further, it was recommended that the structure to implement the EAC Competition law should be well endowed with technical and financial capacity to address anti-competitive practices in the region.

In addition, stakeholders recognise that political will must be created to ensure the implementation of the regional and national competition laws. As one of the means to create political will, the public needs to be educated and be made aware of the benefits of a well-functioning national and regional competition regime, so that public/consumer support can be generated to influence the political process in the operationalisation of the law. In addition, making the private sector aware of benefits of the law, especially concerning the potential benefits for SMEs in the region, will be required to elevate the levels of political motivation to implement the EAC Competition Act. Lastly, sensitisation of policy-makers in the Partner States, which do not have competition regulations/institutions in place to appreciate the benefits of national and regional-level competition policy and law is important. This would motivate them to fast track the processes of putting in place the regulations/institutions.

References

- Asprilla A, Cadot O and Duponchel M (2013), '*Aiming for Real Integration in the EAC*', International Growth Centre Policy Brief 13/0893, September 2013.
- World Bank (2012), '*Burundi Diagnostic Trade Integration Study (DTIS) Update, Volume 1*', Republic of Burundi / Enhanced Integrated Framework (EIF) Report, World Bank July 2012.
- ACF (2014), '*Understanding competition at the regional level: An assessment of competitive dynamics in the cement industry across Botswana, Kenya, Namibia, South Africa, Tanzania and Zambia*', Draft paper for presentation at pre-ICN conference, April 22, 2014, African Competition Forum, 2014.
- OECD (2014), '*Airline Competition, Note by South Africa*', DAF/COMP/WD (2014)65, OECD 05-Jun-2014.
- Kamau, A and Were, M (2013), '*What drives banking sector performance in Kenya?*', Global Business and Economics Research Journal, 2(4): 45-59.
- Sanya S and Gaertner M, (2012), '*Assessing Bank Competition within the East African Community*', International Monetary Fund.
- EAC (2006). The East African Community Competition, 1–23.
- GoK (2012). Kenya Competition act, (12).
- MINECOFIN, R (2010). Republic of Rwanda Ministry of Finance and Economic Planning Public Procurement User Guide, (November).
- Minicom (2011). National Industrial Policy, (April).
- PPOA (2009). The Long Term Policy Framework for Public Procurement in Kenya, (September).

- Republic of Burundi (2009). Industrial Property law Burundi, (1), 1–95.
- Republic of Burundi (2010). LOU No 1/06 Du 25 Mars 2010 Portant Regime Juridique De La Concurrence.
- Republic of Tanzania (2003). The Fair Competition Act, 2003.
- Tanzania, United Republic of (1996). Sustainable Industry Development Policy SIDP (1996-2020).
- Tanzania, United Republic of (2011). The Public Procurement Act, 2011, (9), 1–99.
- Uganda, Republic of (2004.) National Public Procurement Policy Framework.
- Uganda, Republic of (2004) Competition Bill, 2004 Uganda, 1-42.

Endnotes

- 1 www.eac.int/index.php?searchword=NTBs&ordering=&searchphrase=all&Itemid=194&option=com_search
- 2 www.eac.int/trade/index.php?option=com_docman&task=doc_view&gid=57&tmpl=component&format=raw&Itemid=49
- 3 <http://www.theeastafrican.co.ke/business/Uganda-and-Tanzania-top-EA-in-attracting-foreign-funds/-/2560/1906688/-/3jf0ocz/-/index.html>
- 4 TradeMark Southern Africa at website http://www.trademarksa.org/about_us/programme_news/tmsa-supports-trade-and-transport-facilitation-programme-comesa-eac-sadc-reg accessed August 25, 2014
- 5 That is, as in August 2014
- 6 Found at web site <http://www.beveragedaily.com/Manufacturers/Heineken-and-copay-high-price-for-beer-cartel> accessed August 25, 2014.
- 7 Found at website <http://www.bloomberg.com/news/2012-03-02/sabmiller-says-corona-dos-equis-makers-limit-mexico-beer-choice.html> accessed August 25, 2014
- 8 See a CUTS report at website http://www.cuts-ccier.org/7up4/pdf/NTW-Vertical_Restrains-Ghana.pdf accessed August 20, 2014
- 9 Ibid
- 10 See <http://www.businessdailyafrica.com/Corporate-News/Dangote-entry-to-stir-up-East-African-cement-market/-/539550/2266026/-/63bqypz/-/index.html> accessed August 25, 2014
- 11 Press article by Leonard Ugbajah, ‘Why Nigerian Economy Needs a Competition Policy and Law’, Sahara Reporters, February 2014, found online.
- 12 The Africa Report, at website <http://www.theafricareport.com/East-Horn-Africa/banking-east-african-banks-on-integration.html>, accessed August 20, 2014
- 13 Read more at: <http://www.standardmedia.co.ke/business/article/2000102151/authority-to-investigate-banks-over-high-cost-of-credit>, accessed August 20, 2014
- 14 See more at: <http://www.balancingact-africa.com/news/en/issue-no-327/telecoms/safaricom-in-talks-w/en#sthash.EfGPtb9e.dpuf> accessed August 20, 2014
- 15 See more at: <http://www.balancingact-africa.com/news/en/issue-no-357/telecoms/mtn-rwanda-safaricom/en#sthash.TgyUUQQK.dpuf> accessed August 20, 2014

- 16 See <http://africanantitrust.com/tag/safaricom/> accessed August 25, 2014
- 17 Arpad Szakal (not dated), 'Global Airline Alliances – A Competition Law Perspective', found online
- 18 Ibid
- 19 See <https://wolfgangthome.wordpress.com/2013/07/07/> accessed August 25, 2014
- 20 See <http://www.businessdailyafrica.com/Corporate-News/Fly540-terms-new-Kenya-Airways-carrier-a-monopoly/-/539550/2239942/-/k7lk7b/-/index.html> accessed August 20, 2014

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