Competition Regime in Ghana:
a need of the nation

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Acknowledgment

CUTS has been implementing a project entitled, '***Advocating for a Functional Competition Regime for Ghana' (COMPAD)*** with the support from BUSAC Fund. The main goal of this project is to complement the Government of Ghana's efforts towards evolving a functional National Competition Policy and law in Ghana, through an informed process, incorporating the views of key actors and with public support.

CUTS is of the strong view that an enactment of a national competition policy and law infuses a 'level playing field' in key markets and enhances the predictability and certainty in the market, thereby stimulating entrepreneurship and economic growth which becomes a win-win for both consumers and producers.

Essentially, the BUSAC Fund aims at contributing to the creation of a more enabling business environment for development and growth of the Ghanaian private sector. This is achieved by empowering business membership organisations, trade unions and the media, to influence public policy formulation by undertaking appropriate research, developing evidence-based policy positions and advocating those positions with government and other private sector institutions/organisation that may be targeted by the action.

Efforts of several people have gone into making this report a reality. Involvement in various forms, such as direct inputs, thought provoking discussions, timely reviews, incessant

encouragement and guidance have been crucial, in development of the report.

First of all, we express our deep gratitude and appreciation to the BUSAC Fund and its partners-DANIDA, European Union and USAID for providing support to this project. Special thanks are due to Nicolas Gebara and Zakaria Umar Sumaila, the Fund Manager and his deputy. Special thanks also to Lars Joker of DANIDA, who has continued to encourage and motivate our initiative.

We are privileged that Dr. Ekwow Spio Garbrah, Honorable Minister for Trade and Industry of Ghana has appreciated the project and very generously written the 'Foreword' of this report. This shows the close cooperation that CUTS has had with the Ministry of Trade & Industry, Ghana on its work on competition reforms and consumer protection issues. Our sincere thanks to CUTS Accra Board Chair, Justice Samuel Kofi Date-Bah, former Justice, Supreme Court of Ghana for writing the Preface of this report.

We gratefully acknowledge the tireless efforts of Abubakari Zakari, the lead researcher for producing this report – and to my colleagues Edayatu Lamptey, Terra Osei Bonsu, Solee Park and Steve Brefo Yeboah of CUTS Accra.

Finally, we are grateful to colleagues at CUTS International (Headquarters) for their support and guidance, especially Pradeep S Mehta (Secretary General), Rijit Sengupta, Kshitiz Sharma and Shreya Kaushik. Let me also thank Madhuri Vasnani and Mukesh Tyagi for helping us ready this report for its publication.

We would have missed naming some of the others who have helped and supported us in undertaking this endeavour – we remain ever so grateful to them.

Appiah Kusi Adomako
Centre Coordinator
CUTS Accra

Abbreviations

AAR	:	Azimuth Assessors and Realtors
BUSAC	:	Business Advocacy Challenge Fund
CCPC	:	Competition and Consumer Protection Commission
CUTS	:	Consumer Unity & Trust Society
DA	:	Department of Agriculture
DoJ	:	Department of Justice
DTI	:	Department of Trade and Industry
ECG	:	Electricity Company of Ghana
FMCGs	:	Fast Moving Consumer Goods
FTC	:	Federal Trade Commission
GAB	:	Ghana Association of Bankers
GCB	:	Ghana Commercial Bank
GCT	:	Ghana Chamber of Telecommunications
GHACEM	:	Ghana Cement Company
GHC	:	Ghana Cedis
GRIDCo	:	Ghana Grid Company
GSA	:	Ghana Standards Authority
GT	:	Ghana Telecommunications
GUTA	:	Ghana Union of Traders Association

IPPs	:	Independent Power Producers
IPRs	:	Intellectual Property Rights
M&As	:	Mergers and Acquisitions
MoTI	:	Ministry of Trade & Industry
MRPTC	:	Monopolies and Restrictive Trade Practices Commission
NCA	:	National Communications Authority
NCP	:	National Competition Policy
NFA	:	National Food Authority
PMA	:	Pharmaceutical Manufacturers Association
PSGH	:	Pharmaceutical Society of Ghana
PURC	:	Public Utility Regulatory Commission
RTPs	:	Restrictive Trade Practices
SoEs	:	State-owned Enterprises
SRP	:	Suggested Retail Prices
UK	:	United Kingdom
UMB	:	Universal Merchant Bank
VRA	:	Volta River Authority

Foreword

I feel humbled to be asked, as the Minister responsible for Trade and Industry, to write the introduction of this CUTS book on: "Competition Regime in Ghana: *a need of the nation*" Humility because I do not claim to be an expert on competition policy and law.

The objective of a competition regime is to promote competition, contribute towards increased efficiency and curb anticompetitive practices in the market. There is a plethora of evidence from both developed and developing regions of the world to link economic development through private sector development as an outcome of an effective competition regime. The consumer being at the heart of all economic activities, gains from such an environment and indeed from well-functioning markets. In the absence of a functional competition regime, the market becomes sub-optimal and discourages investment, resulting in low value for money in the economy. Consequentially, the poor have to pay more for goods and services they avail themselves.

The interesting thing about competition is that it benefits both consumers and producers. Even intermediate consumers (users of inputs) also benefit from a competitive market. This is to say that every business relies on input material whether in the form of electricity, water, technology, essential facilities, stationeries, computers, vehicles, etc. Competition policy and law is an important dimension in Ghana's socio-economic development agenda in the future. The present Government of Ghana has realised that there is

a 'gap' in the absence of a competition policy, and is in the process of developing the National Competition Policy for Ghana. The approval of the Policy will set in motion the process of development of the Competition Act of Ghana, and eventually a national competition enforcement agency.

An eminent economist like Nobel Laureate Joseph Stiglitz (2001) asserts that, "Strong competition policy is not just a luxury to be enjoyed by rich countries, but a real necessity for those striving to create democratic market economies". The task of evolving fair markets, however, cannot be handled only by the Competition Agency of Ghana – this responsibility also has to be shared by key state and non-state actors by working closely with the Agency. Key stakeholders need to understand why they should give the Competition Policy and Law the necessary attention it requires. This publication of CUTS will help this process, hence its publication is extremely opportune.

The issue of competition policy and law, as well as consumer protection, falls under the domain of the Ministry of Trade & Industry (MoTI). The Ministry is delighted that CUTS Ghana has taken the initiative to engage on a project entitled "Advocating for a Functional Competition Regime in Ghana," with support from the Business Advocacy Challenge Fund (BUSAC).

The Government of Ghana, particularly MoTI, and the ordinary citizen consumers of Ghana would like to express their sincerest appreciation to CUTS for this initiative. CUTS has developed a strong working relation with the MoTI (Ghana) on competition issues, and has undertaking a number of consultancy assignments on competition issues in Ghana currently. CUTS has also developed a sound understanding of ways in which policies, legislation, regulation and institutions that affect the national competition regime. The

MoTI looks forward to continue partnership with CUTS International.

The book seeks to explain the concept of competition not in the abstract language of 'economics' but rather at a level that most readers can read, understand and appreciate. Among many vignettes of knowledge, the book defines competition, types of competition, and barriers to competition as well as benefits of competition to both the consumer and the producer.

Finally, I would like to thank CUTS and the BUSAC Fund for undertaking this Competition Policy Advocacy Project. MoTI, on the part of government, would work hard to ensure the earliest passage of the competition policy and law.

October 2015

Dr. Ekwow Spio-Garbrah
Minister for Trade & Industry
Government of Ghana, Accra, Ghana

Preface

I am delighted that CUTS Accra has been able to bring out this book. CUTS International has a proud record of advocating competition policy as a powerful means of advancing the interest of consumers. CUTS Accra is thus following the well-beaten path of its mother organisation in publishing this book.

The publication highlights the advantages of implementing competition policy in Ghana. All consumers have an interest in the successful application of competition policy in this country. Unfortunately, over the years, this is not an area of policy that has received the attention it deserves. Ghana has no comprehensive competition legislation, in spite of having had a few draft statutes formulated which appear not to have caught the fancy of policymakers as a priority matter.

It is acknowledged, though, that various pieces of legislation have been passed in the country which have an impact on competition and competitive behaviour in key markets, such as the Public Utilities Regulatory Commission Act, 1997 (Act 538) and the Protection against Unfair Competition Act, 2000 (Act 589). However, the country is yet to establish any entity or authority to monitor competition generally in the economy and to take action to arrest malpractices affecting the competitive process.

Overall, the performance of West African countries on competition enforcement needs a 'shake-up'. Given the resource constraints under which some of the governments are compelled to operate, the role of civil society and

international development partners becomes key in moving this agenda forward. That is why a publication such as the present one is important. The interest of the general public and civil society has to be awakened in the concept of competition policy as a way of achieving consumer equity.

The construction of competition law regimes at both the national and sub-regional levels in West Africa is very much work in progress. There is need for much more interactive communication and conversation amongst the stakeholders both at the national and sub-regional levels on this matter. This conversation should feed into the design and implementation of sub-regional and national competition regimes that operate efficiently and with synergy between them. Jurisdictional conflicts should be minimised. Ideally, and ultimately, only one sub-regional competition agency should deal with those competition issues that are best dealt with at the sub-regional level.

A co-ordinated competition regime at the sub-regional and national levels, which is fair and thoroughly thought-through, would contribute to economic development and consumer welfare in the sub-region. Finally, it should be stressed that whatever competition institutions are established should be well-resourced to enable them implement their mandate efficiently.

October 2015

Samuel Kofi Date-Bah
Retired Justice,
Supreme Court of Ghana
and Board Chair, CUTS Accra (Ghana)

Introduction

Competition is a process of economic rivalry in which every seller tries to get what other sellers are seeking at the same time (e.g. sales, profit, and market share) by offering the best practicable combination of price, quality and service. Where the market information flows freely, competition plays a regulatory function in balancing demand and supply.[1, 2]

Competition occurs when two or more firms act independently to supply their products to the same group[3] of consumers. There are **two ways in** which firms can compete among themselves:

(i) **Firstly** they can compete on prices, where firms sell identical or very similar products. The firms must compete on price with each firm trying to undercut others. Successful price competition depends on cost leadership which is the ability to supply a product or service at a lower cost than any other competitor.

(ii) **Secondly** they can compete through differentiation (non-price competition), where a firm makes a product different from those of its competitors and gives the product distinctive qualities that are valued by the target market. These might include branding, styling, special features or higher levels of customer service. Such factors can allow a premium price to be charged while still offering target customers competitive value-for-money.

In a market economy like Ghana, competition could be a force to ensure that firms/enterprises work hard through innovation in order to respond to the dynamics of the market. Competition drives firms/enterprises to be more efficient and offer quality products and services at lower prices, i.e. the effect of competition is to bring to the consumer a greater variety of products and services at lower price. All firms aim to add value. Retaining some of that value as profit is their incentive to produce efficiently, to improve quality and to innovate continuously.

It should be noticed that direct competition involves firms whose products are fairly similar or an approximate substitute for one another. Indirect competition occurs where products are essentially different but still competing for the same pounds of consumer expenditure for example, *gas versus heating oil* or *air versus rail travel*.[4]

Fair competition benefits consumers and the economy as a whole. All things being equal, consumers' purchasing power increase as a result of lower prices.[5] For example, a poor person used to buying his ball of 'kenkey' for 70GHC each can, due to price competition, see the prices coming down to 50GHC. The person would thus save 20GHC which he can use to buy something else.

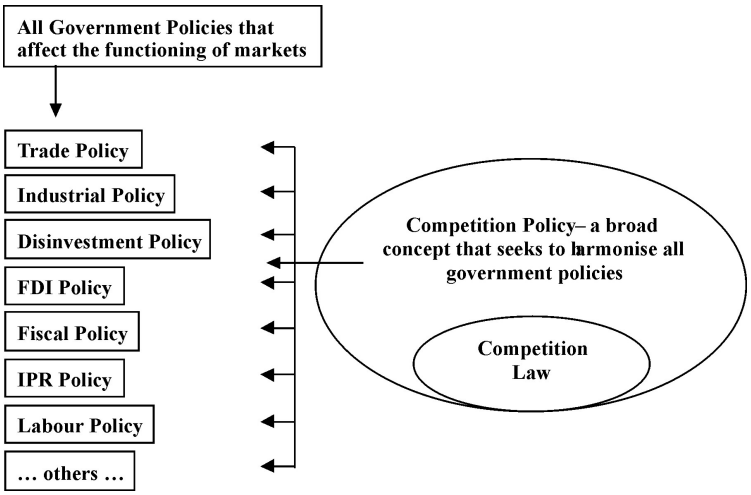
Since competition furthers consumer interest and nourishes the economy, it becomes pertinent for the government to promote healthy competition in the market. This can be achieved by putting in place a national competition regime. Competition policy is essentially understood to refer to those governmental measures that directly affect the behaviour of firms and the structure of the industry. A consistent and realistic competition policy should include both (see Figure 1):

a) Economic policies adopted by the government, that enhance competition in local and national markets (such

as trade, industrial and consumer policy etc. and also economic deregulation and privatisation etc.); and

b) Competition law designed to check and stop anticompetitive business practices by firms and unnecessary government intervention in the market.

Figure 1: Competition Policy *vis-à-vis* Competition Law



Source: Mehta, Pradeep S. (2010), Why Should Consumers be Interested in Competition Policy & Law? CUTS International, Jaipur, India

Ghana's competition law when enacted will empower the competition authority to monitor, regulate and control concentration of power and behaviour of dominant firms and monopolies. In the absence of a competition authority (as in the case of Ghana), sectoral regulators are expected to promote competition and address anticompetitive tendencies (Box 1).

Box 1: Communications Retail Tariffs and Competition in Ghana

Are national communication retail tariffs regulated? If so, which operators' tariffs are regulated and how?

Generally national retail tariffs are not regulated. The National Communications Authority (NCA) is responsible for the regulation of tariffs of services provided by dominant operators or operators with significant market power where market forces are insufficient to constrain service pricing. The NCA may prescribe a method to regulate the cost of service for any public electronic communications service in which a service provider is dominant by establishing a ceiling on the cost, or by other methods that it considers appropriate.

The NCA may also establish price regulation regimes which may include the setting, review and approval of prices by legislative instrument where, inter alia, a sole operator or service provider, or a network operator or service provider that has significant market power, cross-subsidises another electronic communications network or service and where the NCA detects anticompetitive pricing or acts of unfair competition.

However, due to the competitive nature of the telecoms industry currently in Ghana, the NCA does not regulate operators' retail tariffs. Operators and service providers are allowed to determine national retail tariffs in accordance with the principles of demand and supply.

Source: Extract from Bentsi-Enchill, Letsa & Ankomah (2012) "Telecoms and Media (Ghana): An overview of regulation in 46 jurisdictions worldwide"

These efforts as observed elsewhere are aimed at reducing the possibility of monopolies and/or dominant firms abusing their position in the market. Positions of dominance do not give companies incentives to innovate and offer the best at competitive prices to their customers.

However, the natural tendency to make profits and/or eliminate others in the market on the part of firms, at times results in certain practices which distort competition, directly or indirectly. This is not a modern day phenomenon, and is probably as old as the market itself. Therefore, to ensure that consumers and businesses enjoy maximum benefits, competition must be maintained in the market.

Even businesses are customers of other goods and services, and hence need protection from anticompetitive practices of other businesses. This is where the role of the government comes in, especially as the facilitator of a level playing field and enforcer of the national competition law (through the competition authority). Government should keep an eye on the market behaviour and use several tools to promote competition through various policies such as industrial, trade, labour, investment, etc.

On the other hand, the competition authority is required to check anticompetitive practices through the effective enforcement of a competition law, thus promoting the interest of the consumer, the producer and the whole nation.

More so, consumers and their representatives themselves have to be alert in order to keep the government as well as the competition authority of their country active in implementing competition rules. This becomes more important in the liberalised era, where less regulated market players are well informed and organised, while consumers are still ignorant and unorganised.

This booklet aims at generating awareness that could be helpful for the lay Ghanaian consumer and businesses to

identify anticompetitive practices in the marketplace and seek action to rectify the same. The booklet is divided into six major sections. Section I describes various types and nature of competition. Section II discusses the hudles to fair competiton in the market. Section III deliberates on the Ghanaian business communities' views on competition. Section IV presents the perception of Ghanaian consumers on competition. Section V dwells on mechanisms to safeguard and promote competition in Ghana whlist the last section, VI provides some concluding remarks.

I
Types of Competition

Competition between firms may take place in two main forms, namely price competition (perfect competition) and non-price competition (imperfect competition).

Price Competition (perfect Competition): This is a form of competition among suppliers where they try to win customers by offering them a product at a price which is lower than their competitor's price. Lowering down of price is expected to bring about an increase in the market demand of the product. But this strategy may not work for those customers who are loyal to a particular brand and are not price conscious. However, lowering prices has limits in some jurisdictions such as India, Zambia and Kenya beyond which it becomes illegal under competition law (referred to as 'Predatory Pricing'). When Ghana enacts its competition law, it is also likely to make predatory pricing illegal. It would imply that companies are not allowed to lower price below their cost of production if they are dominant as this would result in the elimination of their competitors, which is not desirable.[6]

Non-price Competition (imperfect Competition): This is a form of competition among suppliers where they try to win customers not by lowering prices but by advertising, offering after-sales-service, using sale promotion tools introducing new

products and services and improving the quality of existing products.

Competition can also be categorised into **fair** and **unfair competition**.[7]

(i) **Fair Competition**: This relates to the adoption of fair means by firms, such as producing quality products, becoming cost-efficient, optimising the use of resources, adopting the best available technology, investing in research and development, etc. Fair competition also means that the competitors should play their games within the realms of the law and hence, companies are encouraged to adopt compliance programmes so that as they compete they are not found on the other side of the law.

(ii) **Unfair Competition**: This relates to the adoption of unfair means such as fixing prices with rivals, setting a price which is lower than cost in order to throw out competitors from the market, advertising that belittles others' product, engaging in exclusive arrangements with suppliers of raw materials to foreclose other competitors, and other such acts.

Different Forms of Competition in the Market

Before understanding different forms of competition in the market, it is essential to understand what markets are.

A 'Market' is platform that brings together sellers and buyers of commodities and/or services. It denotes a transaction and not a physical place, where a buyer agrees to pay a price for the product that s/he buys from a seller. Forms of competition in the market can be distinguished according to the structural characteristics of the market such as: number of sellers and buyers, the type of goods produced, the nature

of entry barriers, i.e. new firms cannot enter the market, etc. Generally, there are four types of market competition:

1) Large number of sellers and buyers, identical goods, free entry and free exit: This form of market experience is what is called Perfect Competition. The existence of a very large number of sellers, producing identical goods, results in same price for these goods. Existence of a unique price implies that in this form of competition, firms are price takers and not price setters and can sell any quantity of the products they desire at the existing market price.

A single producer whose share in the market is very small cannot influence the market. The degree of competition (price or non-price) is so low that it can be said that competition is virtually absent here. Moreover, on account of entry and exit being free and easy in this market, firms make only normal profits in the long run (i.e. normal return on capital employed, which is comparable to that obtainable in other equally risky markets plus a bonus for the risk bearing function that the producer undertakes).

Example: Perfect competition is an ideal situation and does not exist in practice but a near perfect competition can be seen in the market for vegetables. Almost everywhere in the world where there are large number of buyers and sellers, buyers have perfect information about the market and no individual seller can usually influence the market on his own.

One good example in the Ghanaian scenario is the commuter transport ('trotro'), especially in a city like Accra or Kumasi. 'Trotro' buses are owned by private individuals where an individual cannot increase the price from the prevailing price at any moment. If he/she does increase his/her fare, passengers would simply not pay the difference once there is another readily available.

2) Single seller, large numbers of buyers with no close substitutes of the product, high entry barriers: This form of market is called Monopoly. In this market form, the monopolist (i.e. the only seller) is the price and output setter. The monopolist can set price and allow demand to determine output or, can set output and allow demand to determine price. There may be reasonably adequate substitutes but not close substitutes. For example, road transport services (public and private), airlines etc. are reasonably adequate substitutes for railways but not close substitutes. Because of absence of close substitutes, competition is absent in the railway sector.

Example: In most of the developing countries of the world, public utilities such as railways and electricity are examples of monopoly where the State is the sole supplier and there are no close substitutes.

In the case of Ghana, Electricity Company of Ghana (ECG) is an example of a public monopoly in the electricity distribution market across all parts of the country. Formerly, the Ghana Telecommunications (GT) was a monopoly provider of fixed telephone lines.

Box 2: Benefits of Competition Regime to Growth
Competition is a key driver of productivity growth both within and across firms. Competition forces firms to improve management techniques and innovate, and it also encourages improvements in the resource allocation between firms. It ultimately benefits consumers through greater choice, better quality and lower prices. This is particularly important in the context of the current economic climate and governments' aim to stimulate growth.

In the short term, competition generates efficiency gains within firms by forcing firms to allocate resources more efficiently and putting downward pressure on costs. In the long term, competition generates dynamic benefits as the best performing firms expand, the worst performers exit and new firms enter the market, leading to increased aggregate productivity. The static benefits from increased allocative efficiency have been shown empirically to be substantial, but it is widely believed that the dynamic benefits exceed the static benefits. Harris and Li (2007) used data from 1996 to 2004 to examine the factors affecting productivity growth. They found that 42 percent of UK total factor productivity growth comes from reallocation between firms, 37 percent from exit and entry of firms and 22 percent from intra-firm productivity growth.

Competition also encourages innovation of new products and production processes and R&D investment as firms need to remain competitive in order to retain customers and survive. Griffiths et al. (2006) analysed the impact of the European Union (EU) single market programme. They found that competition increased innovation by incumbents, but if anything decreased the incentive for new firms to innovate. In addition, competition creates pressure for management efficiency. Bloom and Van Reenen (2006) found that competition increases management quality but does not reduce work-life balance, a trade off that has been argued.

Source: Department of Business Innovation and Skills (2012) "A Competition Regime for Growth: A Consultation on Options for Reform" Impact Assessment March

3) Large number of sellers and buyers, existence of close substitutable products, no entry barrier: This form of market is called Monopolistic Competition.

Existence of large number of sellers and buyers may give an impression that this form of competition resembles perfect competition. But it is unlike perfect competition. Here the existence of a large number of buyers and sellers does not imply that only a single price prevails in the market. Rather, several prices exist in this market form. Each firm enjoys certain price setting power over its product because of product differentiation. Firms do not engage in price competition in this market form since the effect on the demand for the product of the low-priced firm is negligible. Instead, they engage in non-price competition, such as product differentiation, to attract more customers, not as a reaction to the decision taken by other firms.

Example: In most of the countries of the world, markets of the fast moving consumer goods (FMCGs) such as pure water, soap, toothpaste and other toiletries are examples of monopolistic competition where a large number of close substitutes are available. However, in order to remain in competition, the suppliers actively engage in product differentiation to attract customers.

4) Very few sellers, large number of buyers, large number of branded products, high entry barrier: This form of competition is called Oligopolistic Competition. The number of sellers is so small that they are conscious of their interdependence (be it in price, product or promotion). They take into account the competitors' possible reactions while deciding their strategy. Firms, in this market form, tend to produce large number of branded goods in order to diversify the product line and thus

compete on non-price terms (such as brand loyalty) and strengthen this with high advertising budgets.

Example: Ghana's domestic airline market is a typical example of oligopoly. The domestic airline business is currently composed of only three players plying Accra-Kumasi-Accra, Accra-Temale-Accra and Accra-Takoradi-Accra routes.

Table 1: Different Forms of Competition

Models of Competition	Number of Buyers	Number of Sellers	Nature of Products	Barriers to Entry and Exit
Perfect Competition	Very Large	Very Large	Identical	None
Monopoly	Very Large	Only One	Single	Very Large
Monopolistic Competition	Very Large	Large	Small Difference	None
Oligopolistic Competition	Very Large	Very Few	Large Difference	Large

II
Hurdles to Fair Competition

There are three major ways through which business can engage in anticompetitive practices. Brief explanations of anticompetitive practices that are likely to occur in the markets are as follows:

(A) Anticompetitive Agreements

Once Napoleon said: "There are only two forces that unite men: fear and interest". Competition being a formidable force of the market gives both these reasons to firms to come together, connive and thwart the cherished fruits of competition hurting the interests of not only consumers but the economy as well.

Firms can engage in various agreements, either with firms at the same level of production and supply chain (horizontal agreement) or with the firms that are at different level of production and supply chain (anticompetitive vertical agreement). Regardless of the nature of such agreements, all have the ultimate objective of raising prices and increasing profits.

Horizontal Agreements

A cartel is an example of a horizontal agreement; it is an agreement between firms to act in concert on prices, production levels and territories. The elimination of rival firms that formerly competed is accomplished not by integration of

production activities, as would happen in the case of a merger. Instead, the formal rivals maintain separate firms but act jointly in fixing prices or dividing the market, or both. Cartels can also construct private barriers to prevent entry, such as threat of retaliatory or predatory price wars and patent pooling. For all these reasons, cartels are the most egregious of all anticompetitive practices and afford the firm the luxury to remain inefficient.

Box 3: Anti-competition in Cement Industry of Ghana

In **Ghana**, the cement market is dominated by a duopoly between Ghana Cement (GHACEM), and a cement firm of Indian origin, DIAMOND CEMENT, which is also present in Burkina Faso and Togo. Faced with uninterrupted cement price increases in Ghana – only in 2007 the price of a 50 Kg bag of cement more than doubled is still increasing – the Minister of Trade and Industry requested GHACEM to limit the price to a reasonable level. The Minister's request was rejected by GHACEM, which reminded the Minister that the company was now totally privatised and that prices were free in Ghana.

The duopoly has been accused of creating scarcities of cement in order to benefit when prices rise. Without an appropriate competition law empowering a competition authority to enquire on this matter, the State finds itself at a loss. As Dangote and other imported cement came to the Ghanaian market, the current price is almost stabilised to some extent due to access to relatively more varieties. More needs to be done in this sector to remove all obstacles for efficiency of the market for the benefit of both producers and consumers.

Source: CUTS International (2010), A Time for Action – Analysis of Competition Law Regimes of Select West African Countries, Volume I: The Gambia, Ghana & Nigeria

Cartels are a particularly damaging form of anticompetitive activity. Their purpose is to increase prices by removing or reducing competition and as a result they directly affect purchasers of goods or services, whether they are public or private businesses or individuals. Cartels also have a damaging effect on the wider economy as they remove the incentive for businesses to operate efficiently and to innovate.

Horizontal agreements work in the following ways to thwart competition.

1. Price Fixing: The colluding firms undertake these kinds of activities in order to eliminate price competition between them. Sometimes they also follow this route in order to eliminate entry of any potential competitors into the market. A successful cartel raises price above the competitive level and reduces output. Consumers would have no option but to pay the higher price for the cartelised product, as these are mostly essential products.

Box 4: Spain Fines Insurance Groups
Spanish regulators fined six European insurance companies a total of US$180mn for fixing prices on building defect coverage during the Spanish housing boom. It was the heftiest fine ever imposed and the sanctions can be appealed. The six firms were guilty of a 'very grave infraction' of competition rules by engaging in this practice in Spain from 2002 to 2007, when the housing market was red hot and new homes sprouted like mushrooms. The companies named were Mapfre, Asefa and Caser of Spain, along with Swiss Re, Munich Re and Scor of France.
Source: CUTS, ReguLetter, Vol. 10, No. 4/2009 (http://www.cuts-ccier.org/pdf/reguletter4-09.pdf)

2. Bid Rigging or Collusive Bidding: Competitors might agree on who would win a tender or bid, mostly government tenders, and allows the winner to quote higher prices than under competition and win. The other members of the collaboration will either decline to participate in the tender or will make fake offers, called cover bids. These are known as bid rigging cartels.

Box 5: Korea Fines Motorola
The KFTC has fined Motorola Korea KRW696mn (US$729,000) for helping three companies collude to get orders from government agencies. The three companies, Linos, Signal Information Communication and Hoemyeong, work as sales agents for Motorola's trunked radio system, which is used by Korea's police service. Trunked radio is used to maximise capacity in a two-way radio system. The companies were fined KRW282mn (US$295,000) for coordinating their bids for contracts to supply mobile telecommunications devices to security agencies. Experts opine that the Commission's imposition of fines on Motorola is an interesting one in that the Commission imposed fines not only on the companies directly involved in the cartel, but also on the company that made them collude.
Source: Global Competition Review, March 11, 2008

Mechanisms for bid rigging are numerous and varied such as:

(i) ***Bid suppression:*** One or more competitors agree to refrain from tendering or to withdraw a previously submitted tender so that another firm can win the tender.

(ii) ***Complementary bidding:*** The competing firms agree among themselves as to who should win a tender, and then agree that the others will submit artificially high bids to create the appearance of vigorous competition.

(iii) ***Bid rotation:*** The competitors take turns in winning tender, with others submitting high bids.

3. Allocating Markets: Competitors can agree to allocate geographic territories or type of goods or customers among themselves and avoid competing with each other in areas to allow each other opportunities to enjoy super normal profits. This is known as marketing allocating agreements. The agreement between two firms to allocate market is a very serious anticompetitive practice, and may have a greater impact on competition due to price fixing. Consumers do not have an option to switch from one service provider to other, if they are not satisfied with the quality/price of that particular service provider.

Box 6: Drug Firms Nailed for Collusion in South Africa
Pharmaceutical firms Adcock Ingram, Dismed Criticare, Thusanong Health, along with Tiger Brands, will be prosecuted by the Competition Tribunal of South Africa for conspiring over seven years to collude in the rigging of government and private hospital supply tenders, carving up the market and inflating prices in the process. This new price-fixing furor is the latest blow for Tiger Brands, Adcock's parent company, which is still recovering from 2007's bread price-fixing scandal which led to the company paying a Rand99mn (US$129mn) fine. A fourth pharmaceutical company, Fresenius Kabi South Africa (FKSA), which was also involved in the cartel, has

co-operated with the Commission and has been granted immunity from prosecution. The Commission had started the probe after receiving information from a reliable source. The probe focused only on the large volume of parenterals and irrigation solutions that are used to feed critically injured patients who cannot feed themselves. The accused organisations supplied both the public and private sectors through tender systems.

Source: CUTS, ReguLetter, Vol 9, No, 1/2008, available at: http://www.cuts-ccier.org/pdf/reguletter1-08.pdf

4. Limiting Output: Competitors might agree to limit the output they produce or supply into the market, so as to cause some artificial shortages of the product, resulting in excess demand for the product and opportunities to raise prices. These are known as output restricting cartels.

Box 7: Hike in Rice Prices?
Government Mulling Fixed Prices

MANILA, Philippines – Have you noticed an increase in some of your grocery expenses?

Malacañang acknowledged the hike in prices and said it is contemplating suggested retail prices (SRP).

It also gave assurances the government 'is exerting all efforts to ensure stable supply of rice, garlic and ginger.' "Surveillance is being carried out to discourage hoarding and other practices that could lead to artificial shortage. Rolling stores have been deployed to sell these commodities," Press Secretary Sonny Coloma said.

Coloma said the National Price Coordinating Council, led by Department of Trade and Industry (DTI) Secretary Gregory Domingo, is also 'closely monitoring price movements.' "While presently there are no SRPs for these commodities, the Council may prescribe indicative prices, if needed," he said.

A day earlier, Coloma said the National Food Authority (NFA) determined the movement of rice prices was due to 'market forces since it is low season for supply.' He said the prices are expected to stabilise in two months once rice is imported into the country.

As for ginger and garlic, Coloma cited market forces as the likely reason as well, but said the Department of Agriculture (DA) is making sure to address situations that could lead to problems with local production or an unstable supply.

Source: Abridged from article appeared in Rappler on June 17, 2014, which can be viewed at: www.rappler.com/nation/60850-hike-rice-prices-govt-fixed-prices

Vertical Restraint

Agreements between firms which are at different stages or levels in the production (or supply) chains can also stifle competition. This can happen through certain imposed conditions.

1. Tie-in Agreement: Here the supplier sells products (tying products), which is dependent on the purchase of some other products, usually slow moving products (tied products). This tie-in arrangement is such that even if the consumer does not want to buy the tied product, he has to buy it in order to get the desired product.

Box 8: Tie-up Sales of Gas Stoves with Supply of Gas Connection

Shyam Gas Company, was the sole distributor of Bharat Petroleum Corporation Ltd, of cooking gas cylinders at Hathras (Uttar Pradesh) in India, which was allegedly engaged in the following restrictive practices:

- giving gas connections to customers only when they purchased a gas stove or hot plate from the company or its sister enterprise, Shyam Jyoti Enterprise;
- charging customers for the supply of fitting and appliances at twice the market price.

The Monopolies and Restrictive Trade Practices Commission (MRTPC) held that the company was indulging in a restrictive trade practice (RTP) that was prejudicial to public interest. When charged, Shyam Gas Co. agreed to stop the RTP and the MRTPC directed the company to abide by the undertaking.

This practice was also very common across other parts of India as well, but has now been addressed.

Source: Monopolies Trade Regulation & Consumer Protection, DPS Verma, 1985

2. Exclusive Dealing Agreements: Here upstream firms (e.g. producers) force an agreement upon downstream firms (e.g. retailer), whereby the latter is prohibited from dealing with competing producers or distributors. This dealing arrangement can act as a barrier for new entrants and hence affects competition adversely.

Box 9: Anticompetitive Trade Practices against Commercial Banks in Zambia by Property Valuation Surveyors

In July 2009, the Competition and Consumer Protection Commission (CCPC), Zambia handled a complaint from Azimuth Assessors and Realtors (AAR) with regard to allegations of anticompetitive practices in the property valuation business against commercial banks. Specifically it was alleged that the use of a list of preferred valuers by banks was foreclosing the market to valuers not on the list. The conduct by commercial banks of only accepting valuation works for selected property valuation surveyors would likely lead to the restriction of competition among property valuation companies.

The Commission was concerned that having commercial banks with a list of preferred property valuers, restricted competition in that those companies that were not on the list were effectively excluded could not ultimately compete in the market. Further, a prospective or new entrant in the market would find it difficult to enter and grow in the market, respectively. Thus, the conduct was exclusionary and foreclosed the market, which restricted and prevented competition in the relevant market. The practice by commercial banks of restricting the number of property surveyors through the preparation of panel of valuers would likely reduce the number of valuation surveyors.

The Commission felt that there was need for commercial banks to ensure that having a list of preferred property valuation surveyors did not result in them foreclosing the market for those surveyors who are not on their respective lists. It recommended the need for guidelines on the selection of property valuers in the banking and financial sector in consultation with the Bankers' Association and the Valuation Surveyors Registration Board.

Source: Abridged from CCPC Annual Report, 2011

3. Exclusive Distribution Agreements: This agreement is between the supplier and the distributor, where the former dictates the latter on his/her market. That means, whether or not the distributor will sell to any particular region or to particular class of customers is to be decided by the supplier. Again these are marketing strategies, generally followed by firms, but sometimes these practices may pose competition concerns.

Box 10: McDowell & Co. and its Distributors

McDowell & Co. Ltd., in India, imposed territorial restriction on its franchise-holders manufacturers/bottlers, to the effect that they were to confine their selling operations to areas allocated to them and prohibited them from selling their products at any place outside the respective areas. The MRTPC held this practice to be a restrictive one.

The Commission observed that in view of the relatively small share of McDowell in the soft drink industry and relatively large areas allocated to each bottler, the territorial restriction was not substantial and did not restrict or discourage competition but the possibility of these restrictions inhibiting competition at a later stage cannot be ruled out if and when the market share of McDowell increases significantly.

Source: Law of Monopolistic & Unfair Trade Practices, S. M. Dugar, Third Edition, 1997

4. Refusal to Deal: In such cases, firms decide among themselves not to sell or buy from certain customers. In other words, they refuse to deal with any third party, normally a competitor of one of them. Though this may be a fair marketing strategy for optimum profit, sometimes such practices may

reduce competition in the market and consequently could be restrictive in nature.

5. **Resale Price Maintenance:** Here the producer dictates the resale price of goods that would be charged by retailers. When resale price maintenance is imposed, the price of goods becomes uniform at all points of resale irrespective of the difference in location, character and quality of the services provided. In the countries where competition laws are in force, the practices such as resale price maintenance are prohibited.

Box 11: Federal Court (Australia) Fines Online Retailer for Resale Price Maintenance

An online retailer of kitchen appliances – Omniblend blenders, was ordered to pay a pecuniary penalty of US$17,500 for aiding, abetting, counselling and procuring overseas supplier, Taiwan Star International (TSI), to engage in resale price maintenance. The Federal Court of Australia found that TSI sought to induce Omniblend's competitor not to sell OmniBlend blenders at a price less than the price specified by TSI, and subsequently withheld the supply of OmniBlend Blenders to that competitor as a result of the conduct.

The Court further found that the conduct was likely to have caused some unquantified loss and damage to Omniblend's competitor or to the market generally.

Resale price maintenance is prohibited by The Competition and Consumer Act 2010 (Cth) and includes conduct such as pressuring businesses to charge a recommended price and preventing resellers from advertising or selling goods below a specified price.

Source: Dynamic Business, Australia (August 24, 2015), at: www.dynamicbusiness.com.au/news/federal-court-fines-online-retailer-17500-for-resale-price-maintenance.html

(B) Abuse of Dominant Position

Dominance by an enterprise is to be judged by its power to operate independently of competitive forces or to disadvantage its competitors or consumers in its favour. Abuse of dominance can also be collective, such as a cartel not allowing new entrants into the market. It is not necessary that a single firm possess a high market share to abuse its dominance. However, consequences for competition can be severe if the firm is dominant.

For determining whether a specific undertaking is dominant the geographical and product market is to be understood. Geographical dimension includes the geographical area within which the competition takes place. Product market includes all such substitutes that the consumer would shift to, if the price of the relevant product were to increase.

For example, if Coca Cola, together with its cola drink competitor, Pepsi, in a parallel price movement and not necessarily through collusion, decide to increase their prices unreasonably, consumers can shift to other cheaper soft drinks. The only argument here would be about consumers who want only a cola drink for reasons of taste or peer pressure, and then may find it difficult to shift to another soft drink.

Box 12: Effects of Monopoly in Power and Water Supply in Ghana

Energy: Ghana's energy sector is dominated by state-owned enterprises (SoEs) and the transmission of electricity is under a state monopoly (as was the distribution of electricity until only recently). Although Ghana is a net exporter of electrical energy in most years, low water levels at the Volta dam frequently lead to supply shortages and

electricity cuts, a situation which points to the need for more investment in the power infrastructure of the nation.

Water: The water sector is severely under-invested and in recent years, several parts of the country have been prone to acute water shortages. As a result, a high percentage of urban consumers depend on water tankers for their drinking water supply. These consumers pay far in excess of those who have access to water from the piped system. The regulatory body in charge is taking steps to try to lower these costs but points to the need for more investment in infrastructure.

Source: Charles Ackah, Ama P. Fenny and Dela Tsikata (2008), 'About a Competition Law: Ghana', an article published by CUTS International December

Abuse of dominance is broadly of two types: Exploitative and Exclusionary abuse.

1. Exploitative abuse means exploiting customers by ignoring the needs of customers and competitors.

Various ways through which exploitative abuse could be exercised are as follows:

- refusal to deal, such as denial of essential facilities;
- tying, bundling, forced line selling;
- price discrimination;
- intellectual property rights (IPRs) abuses; and
- excessive pricing or price gouging.

2. Exclusionary abuse involves exclusion of competitors. For example, in some states in India, truck operators are not allowed to load and unload goods within the route unless they become part of the truck association. The truck association charges tariffs almost 35-40 percent higher than the prevailing market rates to the non-member truck owners.

The way in which exclusionary abuse could be exercised is given below:

- Exclusive dealing arrangements (distributors cannot sell another supplier's goods or services)
- Predatory pricing
- Non-predatory pricing

(C) Mergers and acquisitions

A merger is a fusion between two or more firms whereby the identity of one (or more) is lost and results in a single firm. Acquisition (or takeover) of one firm by another usually involves purchase of all or a sufficient amount of the shares of another firm to enable it to exercise control.

Box 13: US Antitrust Regulators Approve Microsoft-Nokia Deal

The Federal Trade Commission (FTC) and the Department of Justice (DoJ) have approved Microsoft's US$7.3bn deal to purchase Nokia's devices and services business. Microsoft announced its intention to purchase Nokia's devices and services business back in September 2013. The Board of Directors at each company gave the deal thumbs up, but some of Nokia's shareholders were not immediately convinced that the sale of a Finnish icon would be a better deal.

Under the terms of the agreement, Microsoft said it will pay €3.79bn to purchase substantially all of Nokia's devices & services business, and €1.65bn **to** license Nokia's patents, for a total transaction price of €5.44bn in cash. More specifically, Microsoft is acquiring Nokia's smart devices business unit, including the Lumia brand and products, and Nokia's mobile phones business unit.

Source: http://www.tomsitpro.com/articles/microsoft-nokia-lumia-acquisition-antitrust,1-1442.html

Such mergers and acquisitions (M&As) might be horizontal, vertical or conglomerate.

*1. **Horizontal M&As:*** These involve firms that are competitors, i.e. at the same level of production-supply chain. For example, two firms producing toothpaste merge together.

2. Vertical M&As: These involve firms that are at different level of production-supply chain. For example, a firm producing cold drinks merges with the other producing bottles to contain such cold drinks.

3. Conglomerate M&As: These involve firms in diversified and unrelated business. For example, a firm producing cars merges with a firm that deals in finance. While horizontal mergers may raise competition concerns, conglomerate mergers, generally, do not raise any competition concern.

When two competitors merge, it is but obvious that the market share of the merged entity would be more than that they individually used to share. Broadly there could be three cases due to any horizontal merger:

a) a monopoly situation may arise;
b) the merged entity may become a dominant player in the market; or
c) even the merged entity cannot capture enough market power.

While cases (a) and (b) might pose competition concerns, case (c) is unlikely to give rise to any competition concern, if there remain other competitors in the market. Hence, the issue from the point of view of competition law and policy is not merger in itself, but whether such merger results in a monopoly situation or a dominant market player.

In the absence of a national competition legislation, public M&A activities in Ghana is governed by the Companies Act 1963, the Securities Industries Act 1993 as amended by the Security Industry (Amendment) Act 2000, the Securities and Exchange Commission Regulations 2003, the Takeovers and Mergers Code and the Central Securities Depository Act 2007. In recent times, there has been a spate of M&A activities in Ghana, which have resulted in considerable changes in various key markets (see Box 14).

Box 14: Mergers and Acquisitions on the Rise in Ghana

Randolph Rodrigues, a senior investment banker at Stanbic Bank Ghana, predicts a rise in M&A activity in the country given the increasing emphasis on local content across sectors in the country.

According to him, "the renewed quest for the institution of local content requirements across industries is expected to drive a wave of M&A activity, with larger foreign-owned enterprises seeking partnership opportunities with indigenous operations to continue to grow within the legal framework of their respective industries. Banks are well placed to lead the way in advisory services."

Towards the end of April, 2014, Merchant Bank Ghana's name was changed to Universal Merchant Bank (UMB) after Fortis Equity Fund Ghana acquired the bank in the much-contested takeover.

Other notable M&A transactions include the acquisitions of Provident Life and Express Life by Old Mutual and Prudential Plc respectively, in the insurance sector.

The acquisition of FanMilk International, producers of dairy products and fruit drinks, by Abraaj (the middle-east based private equity firm) through its prior acquisition of Aureos Private Equity Fund, and Danone (French global leader in the dairy, baby food and water products), has

been a major development in the FMCGs segment. The acquisition of Benso Oil Palm Plantation by Wilmar Group, in the agriculture space and the merger of Keegan Resources and PMI Gold in the mining sector have also vividly illustrated the growing M&A activity in Ghana.

Even though numerous financial entities list 'investment bank' or 'corporate finance advisory' among their services, an educated survey of the financial services sector shows that a majority of the transactions executed in the market have been advised on by a select group of financial institutions. Aggressive growth in the financial sector over the past decade has spurred meaningful M&A activity with Ecobank Transnational acquiring The Trust Bank and Access Bank merging with Intercontinental Bank. Bank of Africa, a francophone West African banking group, a few years ago bought out the 49 percent equity stake in the erstwhile Amalgamated Bank held at the time by Nigerian investment holding company Meeky Investments. Last year, a Nigerian private equity firm acquired a controlling stake in erstwhile fully Ghanaian owned First Atlantic Bank. The latest acquisition in Ghana's banking industry is First Bank of Nigeria's takeover of erstwhile Malaysian owned International Commercial Bank.

Ghana's ever-evolving telecommunications market has not also been spared. MTN took over Areeba after the latter had taken over Spacefon. Airtel also took over Zain and Vodafone, Ghana Telecom and its One-touch mobile network. Similarly, Hong Kong headquartered Hutchinson Whampoa took over the only privately owned Ghanaian mobile network, Celtel in the late 1990's and re-named it Kasapa before selling it to a Middle East based firm which has since rebranded it as Expresso.

Source: www.myjoyonline.com/business/2014/may-8th/report-mergers-and-acquisitions-on-the-rise-in-ghana.php (May 08, 2014)

III
Ghanaian Business' Views on Competition

This section presents first-hand information from Ghanaian business community about their perceptions, opinions and views on competition in various sectors of the country's economy. A sample of 50 firms was selected from 8 sectors for this field survey with semi-structure questionnaires. The sectors covered were: Telecommunication, Banking, Beverage and Beer and Cement Production, Power and Energy, Pharmaceutical and Health, Pure/Mineral Water Production and Food Products. Table 2 provides the list of firms that participated in the survey.

The general characteristics of the respondent firms are presented in Figures 2 and 3.

Figure 2: Respondent Firms By Sectors

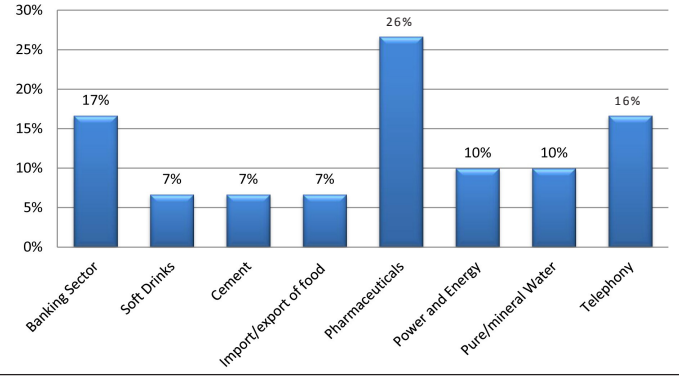
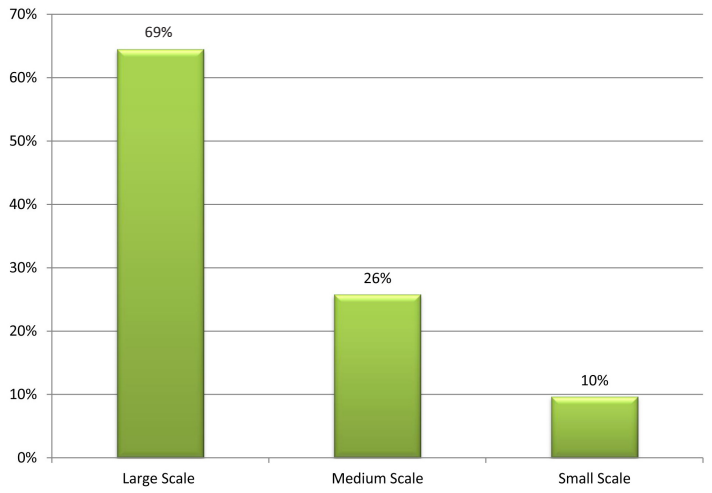


Table 2: List of Respondent Firms

Banking	Beverage and Beer	Cement Production	Power & Energy	Import/ Export of Food Products	Pharmaceutical & Health	Pure/Mineral Water Production	Telecommunication
Barclays	Coca cola	Dangote	GRIDCO	Vega Food	East Cantonments	Standard water	MTN
Bank of Africa	Pepsi	Diamond	ECG	Far East	Agbeve	Everpure Herbal	Expresso
Fidelity	-	-	VRA	Blue skies	Letap	Voltic	Glo Ghana
GCB	-	-	-	-	Aryton-Drugs Manuf.	-	Tigo
Stand chart	-	-	-	-	Dannex	-	Airtel
-	-	-	-	-	Global Pharmaceuticals Ltd	-	-
-	-	-	-	-	Eskay Therapeutics Ltd	-	-
-	-	-	-	-	Gokals Laborex	-	-
5	2	2	3	3	8	3	5

Figure 3: Size of Respondent Firms



EMERGING FINDINGS

i. The nature of market in some key sectors in Ghana

Among the most critical challenges facing Ghana's economy currently include high cost of doing business which is attributable to high cost of capital in the form of interest rates, energy crisis (persistence increase in petroleum and electricity), high cost of transportation and communication (telephone and internet) costs.[8] The situation is confirmed by the World Bank Doing Business reports, which indicates that Ghana slipped from rank 62nd in 2013 to rank 67th in 2014.[9] Access to reliable and affordable electricity is vital for businesses. To counter weak electricity supply, many firms in Ghanaian economy have to rely on self-supply sometimes from plant and generators, which often come at a prohibitively high cost.[10]

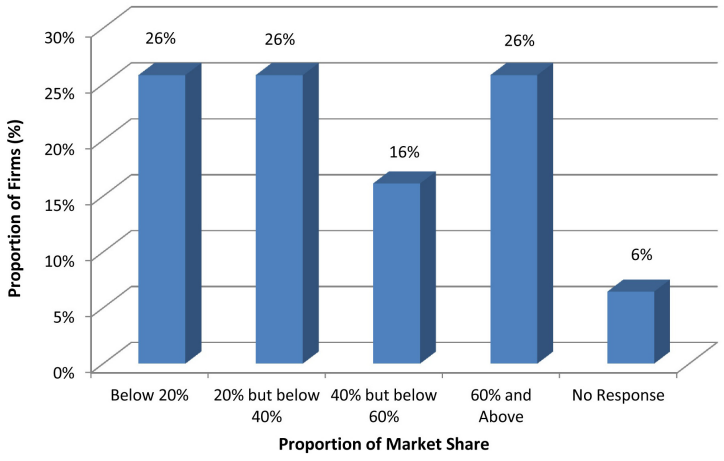
Most of these remain challenges because of the fact that the industries providing those services face little or no competition. **Only a handful of firms provide electricity services and have not paid attention to being efficient so, electricity remains highly priced and the supply unreliable – thereby affecting industrial and commercial users.** The Electricity Company of Ghana (ECG) is the only company that distribute electricity and is therefore protected from the vigour and vagaries of market forces induced by competition.

Some markets in the Ghanaian economy are characterised by dominant firms as confirmed by the businesses themselves. For instance, 26 percent of respondents seem to have considerable influence in the market with market share of over 60 percent, whilst 74 percent had market shares of 40 percent.

Though GHACEM did not respond to the field survey questionnaire, the other cement production firms indicated that GHACEM dominates the cement manufacturing and distribution in the economy controlling over 60 percent of the market. Due to this it has the ability to manipulate the price or the quantity of cement in the market. The impact of GHACEM's dominance is felt in the housing and construction sector, where majority of ordinary Ghanaian cannot afford to own homes. Besides, government infrastructural development projects partly became very expensive due to the high price of cement.

In the pharmaceutical and health manufacturing sector, Ernest Chemist seems to have high influence in the area of supply of pharmaceutical products throughout Ghana, as clearly pointed out by the field survey. In the mobile telephony sector, MTN is the market leader and controls over 60 percent of the telecom market in Ghana.

Figure 4: Average Market Share of Respondent Firms



ii. High Entry Barriers in Certain Sectors

Barriers to entry are obstacles that make it difficult for new firms to enter a given market. Because barriers to entry protect incumbent firms and restrict competition in a market, they can contribute to limited choice of goods and services and have negative (upward) impact on prices. The existence of monopolies or market power is often aided by barriers to entry. The energy and power sector all over the world has been very difficult to enter especially hydroelectric subsector because of many factors apart from high initial investment capital required, such difficulties in constructing grid lines and the human security implications. It is also national assets in most countries including Ghana. However, power and electricity distribution is neutral as compared to power production and transmission.

In the banking industry, assessment of views and opinions of participating banks in this survey revealed high levels of

entry barrier due to the high cost requirements as per existing regulation for establishing a Bank in Ghana. **80 percent of the respondent banks said that entry into the banking business is difficult.** Banking is highly capital-intensive business as an entering firm is required to meet certain huge capital requirements in order to start the business. Besides, the banking business is highly regulated making it difficult to meet certain non-financial norms and standards. Evidence suggests a non-competitive market structure in the system, which may be hampering financial intermediation.

Buchs and Mathisen (2005) had argued that the market structure and other market characteristics in Ghana's banking sector constitute indirect barriers to entry thereby shielding the large profits in the Ghanaian banking system. It seems the situation hasn't improved much over these years.

Similarly, pharmaceutical manufacturing in Ghana is seen to face difficulties in entry because of high cost of machinery (including imports), raw materials and registration process, and difficulties in meeting the prescribed manufacturing standards. **Pure mineral water business is the easiest among all sectors as machines and capital required to enter the business are not as expensive as other business ventures.**

According to the respondents from pure and mineral water industry, raw materials including water, packaging and transportation are readily available. The only difficulty was meeting the Ghana Standards Authority (GSA) and Food and Drug Board's regulations and safety norms.

iii. Impacts of sector association and benefits

Business membership organisations and associations can have profound influence on products' prices, quality and quantities in specific markets. Associations sometimes allow the member to form cartels (and operate in the disguise of a syndicate).

A cartel is an agreement between competing firms to control prices or exclude entry of a new competitor in a market. It is a formal organisation of sellers or buyers that agree to fix selling prices, purchase prices, or reduce production using a variety of tactics.[11]

Business associations acting as cartels could arise in an oligopolistic industry, such as the banking in Ghana where the number of sellers is small or sales are highly concentrated. Experience across jurisdictions suggest that Business Association members may agree on such matters as setting minimum or target prices (price fixing), reducing total industry output, fixing market shares, allocating customers, allocating territories, bid rigging, establishment of common sales agencies, altering the conditions of sale, or combination of these. The aim of such collusion is to increase individual members' profits by reducing competition. Typical business associations in Ghana include the Ghana Association of Bankers (GAB), Pharmaceutical Manufacturers association (PMA), Pharmaceutical Society of Ghana (PSGH), Mineral Water Producers Association, Ghana Chamber of Telecommunications (GCT) and Ghana Union of Traders Association (GUTA).

From the survey, about 26 percent of respondent firms admitted that their respective associations have influence on their decision making. About 23 percent ascertained that there is the possibility of network agreements or other arrangement with firms to decide on price of products among business associations.

Some of the comments from respondents that were influenced by associations included:

- Being able to give direction and suggest opinions about pricing and tax alignment among members of Telecoms Chambers;
- Influence pricing of products and regulate the market of pharmaceuticals;

- Setting performance benchmarks for members of Association of utility producers and distributors

iv. Tendency to consult competitors

At least one can observe that the nature and degree of influence that is exerted by business associations can be harmful. The survey result shows that **23 percent of respondents claimed their firms do consultations with competitor firms on setting up prices of products or services.**

In the soft drink and beverage sector, respondent firms ascertained that firms consult each other in order to maintain constant price in the market. Similarly, among the power and energy sector, **members including VRA, GRIDCo and ECG meet to agree and make proposals for approval to Public Utility Regulatory Commission (PURC) on price to be charged.** However, ECG mentioned that association has no influence on its pricing because decision on such matters rest with the management.

In the pharmaceutical sub-sector, the Association allows members to do consultation in meetings to arrive at prices of products. One main reason cited was that, the consultations are done in order not to cheat or be cheated.

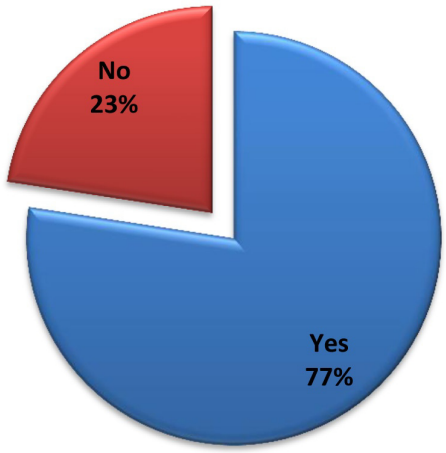
The mobile telephony companies, even though, have not formed any association in Ghana but do consult each other on setting up tariffs for products and services. The comment made by telecom players was that consultation is done on pricing to avoid price fluctuations and to ensure tariffs are affordable to the Ghanaian populace.

v. Level of contestability in the markets

77 percent respondents claimed that the market is contestable, whilst 23 percent claimed there is no competition (see Figure 5). In the banking sector, banks believe that there is competition since they offer same products and need to

constantly innovate to attract consumers. Besides, it is believed that competition is on-going in the sector due to issues related to external environment and banking regulations. According to the soft drink producers, the market relies on product differentiation through pricing of products, quality of products, and brand equity.

Figure 5: Market Contestability Response



GHACEM believes that cement products from China comes at relatively lower cost with poor packaging, and is affecting their market share. However, Diamond is out- competed by GHACEM because of its proximity to Accra where demand for cement is the highest. In the energy and power sector, ECG believes that lack of competition was due to inability of the new firms to raise the huge capital required to expand the networks to all the regions in the country. VRA claims that heightened competition is likely to occur in the power production subsector due to the presence of larger independent power producers (IPPs).

Importation of food product does not face any serious competition due to rising cost of imports (duties and other levies), which has forced out small importers. Blue Skies is an exporter of food products and believes there is considerable price competition in the market. The pharmaceutical sector claimed that it faces competition from imports of cheap and fake products. Similarly the pure/mineral water producers claimed that there is considerable competition in the sector as there are lots of firms producing and offering the same product. In the mobile telephony sector, the market is contestable. However, respondents conceded that the challenges facing the sector include price wars, false claims and adverts, high charges of interconnectivity between different networks and weak regulation in SIM frauds.

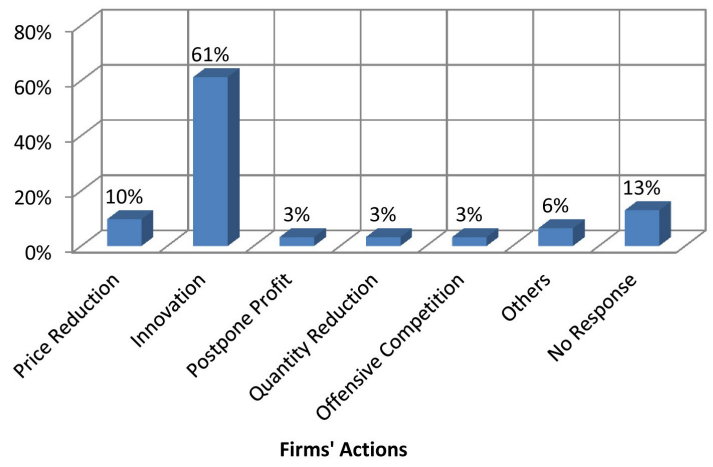
vi. Firms' reaction to competition

Competitive pressure affects firms' behaviour and performance through a variety of channels, including actions undertaken by other firms in an attempt to attract the same limited bunch of customers in the same market. Firms in the same sector selling attractive products or services to customers than other competitors will have pricing power. That is, the firms with attractive products may be able to maintain or increase a positive price differential between their selling price and that of competitors without losing market share because the customers perceive that the firms' products or services deliver more benefits than their competitors.

Firms in Ghana react to competitive pressure in diverse ways. For instance, **61 percent of representative firms claimed to react to competition through increasing investment in innovation,** 10 percent react to competitive pressure by reducing prices to remain competitive. Others (three percent) try to reduce prices so much so as to sacrifice current profit for high future profit (i.e. price undercutting that can lead to

predatory pricing depending on the firms' market share). About three percent also reduces quantity of products/services to contract supply in order to create shortage leading to high prices.

Figure 6: Firms' Reaction to Competition



vii. Perceived Benefits of Competition regime in Ghana

In a relatively competitive market like Ghana, prices and quantities of goods and services are expected to settle down to levels that generate economically efficient outcomes at a given point of time. This implies that, prices that consumers pay for goods and services should be equal to the incremental (or marginal) costs of the firms producing such goods and services. Therefore, anticompetitive practices, such as cartel and collusion by firms raise prices above incremental costs leading to inefficiency in the market.

The business survey has confirmed that rivalry between firms contribute to innovation, productivity and growth. **The opinions and perceptions of the business community in Ghana**

highlights that fair competition can improve market outcomes. According to the business survey 55 percent of firms were of the view that fair competition will increase growth of their firms, 26 percent believed fair competition will increase innovation whilst three percent opined that it will increase sales and revenue of their firms (see Figure 7). However, competition can possibly contribute to innovation, productivity and growth if appropriate enforcement of competition laws promotes inter-firm rivalry.

viii. Influence of big firms on small ones in same markets

Concentrated market power in the form of monopolies or dominance constitutes the biggest threat to an economy like Ghana. Relatively smaller firms are of the view that the bigger firms threaten their survival in the market. Survey result shows that, **61 percent of respondent firms confirmed that big firms are threat to smaller and emerging firms, especially new entrants.** Whilst competition must be promoted, small firms/ businesses should be protected from exit by not allowing to suffer from big competitors' brand marketing at lower prices. Some of the firms claimed that the best way for them to stifle competition is to use offensive in the market or to undercut prices so as to eliminate the competitors or new entrants (see Figure 6).

The conduct and structural approach by big firms make size of a firm alone to be sufficient to condemn a dominant firm in a competitive regime. (Example: In the landmark *Standard Oil* decision in 1911, the Supreme Court of US focussed largely on the predatory acts of Standard Oil in achieving total dominance in the oil business).[12]

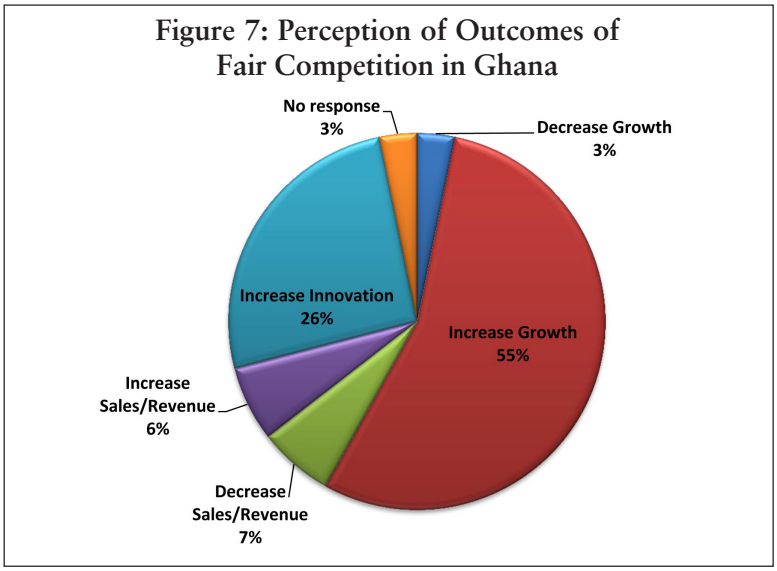


Figure 7: Perception of Outcomes of Fair Competition in Ghana
No response 3%
Decrease Growth 3%
Increase Innovation 26%
Increase Growth 55%
Increase Sales/Revenue 6%
Decrease Sales/Revenue 7%

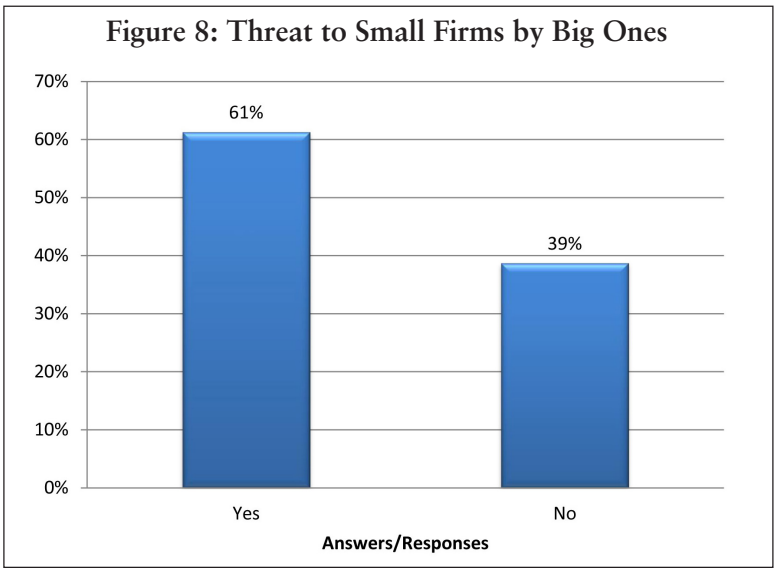
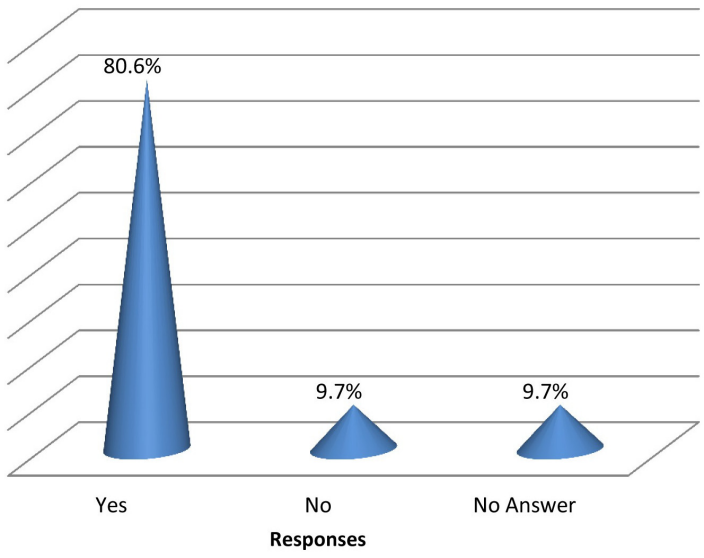


Figure 8: Threat to Small Firms by Big Ones
70%
60%
50%
40%
30%
20%
10%
0%
61%
39%
Yes
No
Answers/Responses

ix. Business perceptions about value of competition law in Ghana

A functional competition regime is about enforcement of anticompetitive or antitrust policies and laws. An effective competition regime promotes fairness and morality among market players. Competition involves an economic efficiency which is considered to be a standard consumer and producer welfare. **Ghanaian businesses are generally seen to support the adoption of a functional competition regime as reflected in the responses by the firms covered in this survey.** Over 80 percent of respondents states that Ghana should get competition law and policy in place (see Figure 9).

Figure 9: Need for Competition Policy/Law in Ghana



IV

Perception of Ghanaian Consumers on Competition

This section analyses perceptions, views and opinions of ordinary consumers of products and services of selected sectors of industries. A randomly selected sample of ordinary consumers associated with sectors in question was obtained from Greater Accra and Ashanti regions of Ghana for this survey. In all the regions together a total of 1,166 respondents were surveyed successfully out of the target 1,200 respondents. Table 3 summarises the characteristics of respondents.

i. Justification of consumer concerns

Most Ghanaians are much concerned about the prices, quantities and quality of goods and services they patronise in their daily lives. Ghanaian consumers usually compare prices, quantities and quality of products and services provided by competitors before patronising.

Table 3: General Characteristics of Respondents

Gender	*Frequency*	*Percentage*
Female	503	43%
Male	663	57%
Total	**1,166**	**100%**

Range	*Frequency*	*Percentage*
Less than 20 years	52	4.5%
20-24 years	405	34.7%
25-29 years	315	27.0%
30-34 year	145	12.4%
35-39 years	80	6.9%
40-44 years	58	5.0%
45-49 years	56	4.8%
50-54 years	19	1.6%
55-59 years	12	1.0%
60 and above	24	2.1%
Total	**1,166**	**100%**

Table 4: Consumers' Consciousness on Price, Quality & Quantity		
Answers	*Frequency*	*Percentage*
Yes	1,041	93%
No	73	7%
Total	1,114	100%

89 percent of respondents were conscious about prices, quantities and qualities of goods and services they consumed daily (see Table 4 and Appendix I). It is however, unfortunate that most of these goods and services are either provided at high prices, or low quantity and poor quality due to lack of meaningful competition in most of the key markets that consumers interact on a daily basis.

ii. Consumer perception on monopolistic behaviour in the market

Monopolies and dominant firms use patents, M&As to obtain industry dominance and prevent market entry. If left unmonitored and unregulated, monopolies can adversely affect businesses, consumers and even the economy.

A monopoly's potential to raise prices indefinitely is its most critical detriment to consumers. Because it has no industry competition, a monopoly's price is the market price and demand is market demand. Even at high prices, customers will not be able to substitute the good or service with a more affordable alternative.[13]

As the sole supplier, a monopoly can also refuse to serve customers. If a monopoly refuses to sell an important good to a company, it has the potential to indirectly shut down that business. If the supplier sells to consumers, it can refuse to serve areas that have lower profit potential, which could further impoverish a region.[14]

A natural monopoly, like the water and sewage system, can prevent the duplication of infrastructure and thus reduce potential costs to consumers. Natural monopolies that are run by non-profit organisations and local governments can afford to keep prices low enough to provide services to the majority of the public. When monopolies are privately owned by for-profit organisations, prices can become significantly higher than in a competitive market.[15] As a result of higher prices, fewer consumers can afford the good or service, which can be detrimental to overall societal well-being.

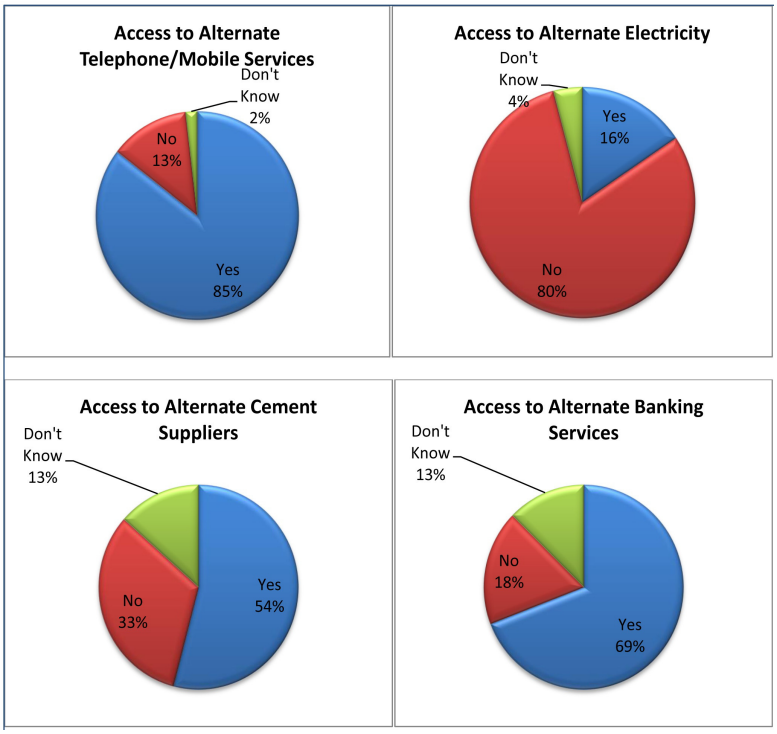
One option for policymakers would be to dismantle the monopoly. This can be accomplished by splitting the monopoly into two companies, divide their bundled products or services, or separating services into smaller competing regional services. The monopoly's separation will lower the barriers to entry for new companies. The new competition will eventually

provide a wider variety of options and most likely lower prices for consumers. For example, in the late 1990s Ghana experienced nation-wide deregulation in the telecommunications industry where it separated Ghana Post from Ghana Telecom. **Competition in the telecommunication industry was increasing as start-ups begin using mobile technology to disrupt the cost structures of the Ghana telecom company.**

Another option for policymakers would be to focus on lowering prices instead of breaking apart a monopoly. Regulators can set pricing controls called price caps in order to prevent the company from setting unreasonable prices. Price capping is a way to reduce the price benefit of being a monopoly as the price lowers to that of a competitive market. Once competition increases in the industry, policymakers can reduce or remove the price caps. According to The Energy Journal, all US electricity independent system operators have price caps. Similarly, setting rate-of-return price regulations can help reduce artificially high utility prices. The government can also opt to nationalise natural monopolies to ensure that utility prices are in the best interest of the public.

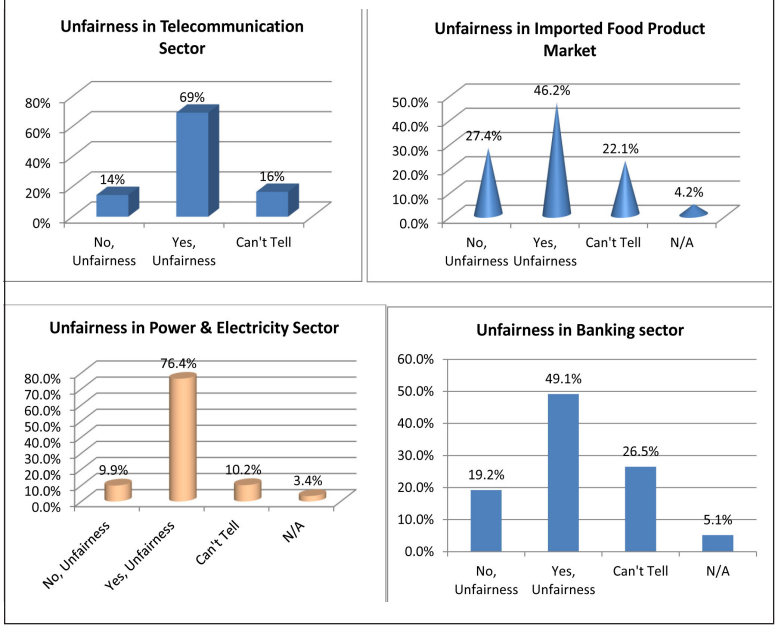
In order to establish the fact for existence of monopoly power in various seven selected sectors in Ghana's economy, consumers were asked about ease with accessibility of similar or alternative products or services offered in various sectors. The result indicates that 85 percent of consumers claim that they can easily access alternative services and products from competitors in telecommunication the industry. 80 percent of consumers claimed not to have access to alternative services electricity from ECG national grid. 54 percent of respondents have alternative sources of supply of cement apart. 69 percent have varieties of banks they can switch for alternative services (see Figure 10).

Figure 10: The Extent of Availability of Alternative Products and Services



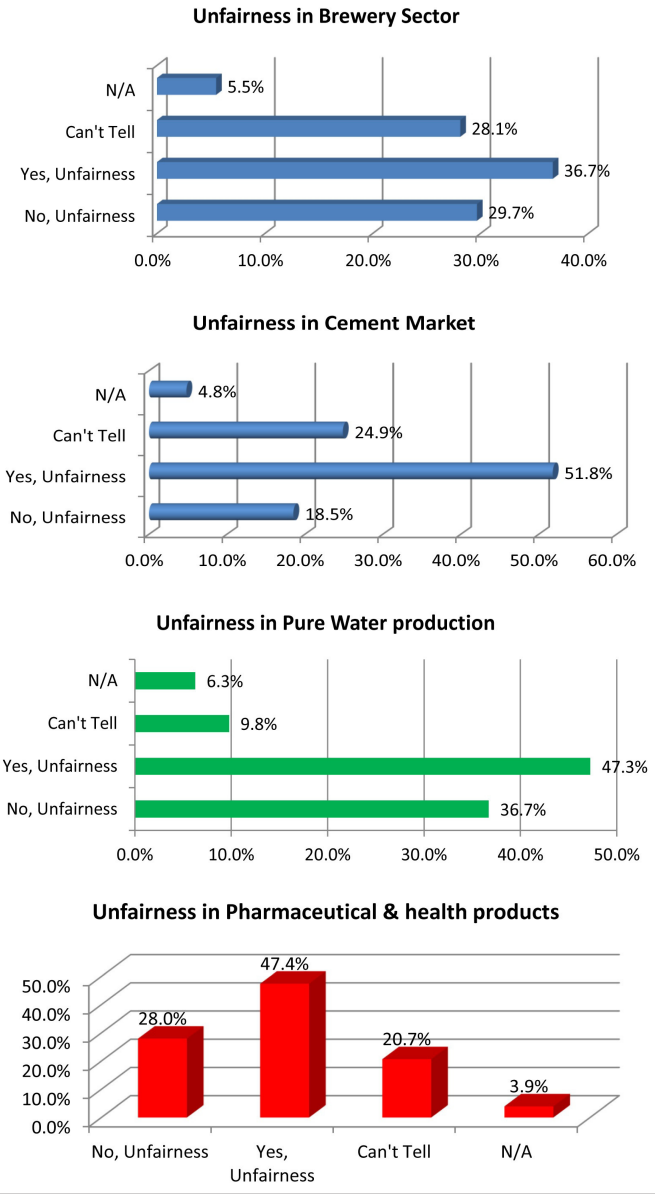
In addition, most participating consumers in the survey are of the belief that there is generally unfairness in the market. For instance, 69 percent of consumers said there are unfair practices in the telecom sector; 46 percent claimed such practices existed in the imported food market; 76 percent of consumers asserted unfair practices were present in power and electricity sectors; whilst 49 percent thought the banking sector to be characterised with such practices.

Figure 11: Availability of Unfair Competition in Various Sectors



Furthermore, 37 percent claimed unfair competition existed in the brewery market; 52 percent believed these practices were rife in the cement sector; 47 percent were of the view that unfair practices were found in the Pure and mineral water production market; and 47 percent indicated that the pharmaceutical sector was characterised by such unfair practices.

Figure 12: Unfairness in Brewery, Cement, Water and Pharma Sector



iii. The value of competition regime to the consumers

Where markets work well, they provide strong incentives for good performance – encouraging firms to improve productivity, to reduce prices and to innovate; whilst rewarding consumers with lower prices, higher quality, and wider choice. However, markets can and do fail.[16]

Competition policy aims to ensure that the markets work efficiently and to avoid market failures, most notably the harm that can come from market power.[17] Market power arises when one or a small number of firms dominate a market and it is difficult for other firms to enter. It leads to less innovation, higher prices, lower choice, and lower quality than would result from efficient competition.

The monitoring and enforcement of competition regime in Ghana, should therefore, mean that action is taken to avoid or address unfair and anticompetitive practices in the economy. The consumers of final goods and services are one of the end beneficiaries of the resultant competition regime.

From the result of the survey, the value of competition regime is enormous. It is confirmed from respondent consumers that competition regime improves fair competition among suppliers, sellers or producers. For instance, **74.6 percent of respondent consumers said that competition regime in Ghana will improve competition among producers and sellers of similar goods and services.** 71.4 percent of the consumers ascertained that a functional competition regime in Ghana is expected to improve innovation among competitors of consumer goods and services, which in turn, will lead to high quality (72.6 percent of consumers). Besides the quality, the prices are expected to relatively become cheap as a result of intense competition (see Table 5).

Table 5: Value of Competition Regime to Consumers in Ghana

Improved Competition in the Market		
Response	**Frequency**	**Percentage**
Yes	870	74.6%
No	68	5.8%
Don't Know	155	13.3%
N/A	73	6.3%
Total	**1166**	**100.0%**

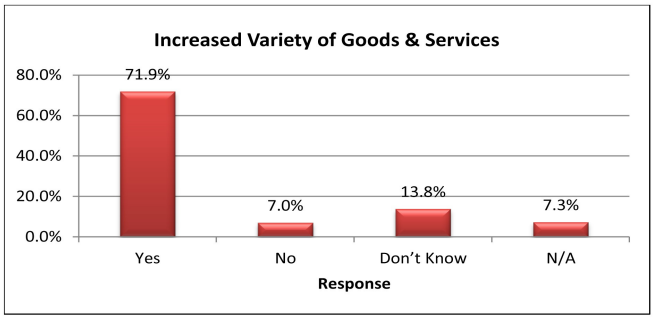
Improved innovation among Competitors		
Response	**Frequency**	**Percentage**
Yes	833	71.4%
No	87	7.5%
Don't Know	157	13.5%
N/A	89	7.6%
Total	**1166**	**100.0%**

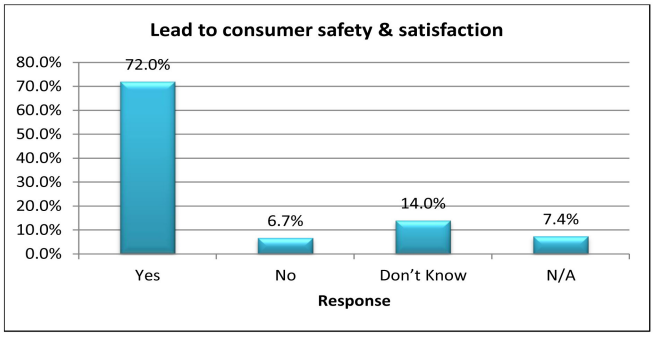
Improved Prices of Goods & Services		
Response	**Frequency**	**Percentage**
Yes	803	68.9%
No	111	9.5%
Don't Know	162	13.9%
N/A	90	7.7%
Total	**1166**	**100.0%**

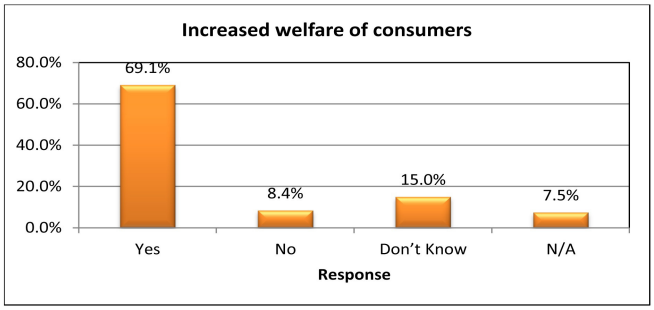
Increased quality of products &services		
Response	**Frequency**	**Percentage**
Yes	847	72.6%
No	87	7.5%
Don't Know	147	12.6%
N/A	85	7.3%
Total	**1166**	**100.0%**

Moreover, consumers will be exposed to varieties of goods and services as a result of a functional competition regime in Ghana. About 72 percent claimed that fair competition in the market will give a lot of varieties of goods and services. Functional competition regime also leads to consumer satisfaction and safety as 72 percent of respondent consumers confirmed this in Figure 13. Finally, welfare of consumers are going to increase because, they get access to quality, affordable, variety and more quantity of goods and services in the economy (see Figure 13).

Figure 13: Value of Competition in terms of Variety, Satisfaction and Welfare







V
Mechanisms to Safeguard and Promote Competition in Ghana

Functional competition regime

There is the need for the Government of Ghana to put in place a mechanism to safeguard and promote competition in the form of the Competition and Consumer Protection Law through the Act of Parliament. The Competition Law or Act should be able to establish the Competition and Consumer Protection Authority which should be mandated to implement the competition law in Ghana. The Competition and Consumer Protection Authority must be primarily responsible for fostering a competitive culture where individuals and their businesses (large and small, at all levels of production) should be given the opportunity to trade efficiently and fairly, while ensuring that consumer rights are upheld and adequately protected.

The government is able to adopt a competition regime, through competition law and policy the responsible authority will be able to, *inter alia*:

- monitor, control and prohibit actions or anticompetitive behaviours which are likely to adversely affect competition and fair trading in Ghana;
- carry out investigations in reported and observed instances of anticompetitive trade practices;

- investigate proposed merger transaction to avoid dominance;
- provide persons engaged in business with information regarding their rights and duties under the mandate of the competition authority;
- provide information for the guidance of consumers regarding their rights under the mandate;
- undertake studies and make available to the public reports regarding the operation of the mandate; and
- cooperate with and assist any association or body of persons to develop and promote the observance of standards of conduct for the purpose of ensuring compliance with the provisions of the mandate.

Recommendations to Government

From the business survey, the representative firms had recommended the following:

- There should be consultations with all key stakeholders for operationalisation of the national competitive policy and law in Ghana
- There must be fair competition regime, and no price-related agreements between competitors
- Government policies should offer a level playing field for all players
- Government should enforce a fair implementation of competition law and policy devoid of politics and bias
- Government should address factors rendering a high cost of production among business to enable them have a fair competition
- Ensure fair play in the sector and not to give advantage to government owned entities (promote 'competitive neutrality')
- Government should liaise with the telecom regulators to regulate competitive telephone services and pricing.

Regulators should not interfere with service provider's operations

- Government should place embargo on goods imported, which are locally manufactured to enable the local industries get a firm foundation
- Strict compliance regarding standardisation, legal and high quality of products amongst competitive companies
- Price of commodities of the same kind should be sold at the same price
- Government must allow the formation of association with the aim of controlling prices
- The law/policy to be passed should be in the interest of all stakeholders such that it achieves a 'win-win' situation

Views from Consumers:

- Need to promote understanding and awareness about the benefits of a national competition regime for citizens
- Make consumer organisations partners of the national competition authority in promoting fair markets in Ghana
- Design the national competition regime such that it meets the expectations of Ghanaian consumers – especially in terms of improving the quality of goods and services, ensuring better consumer satisfaction and increasing variety of goods and services in the market.

VI
Conclusion

The main purpose of this report was to develop a body of evidence that can be used to advocate to key stakeholders about the need for a functional competition regime in Ghana. This report has outlined how functional competition law and policy could be helpful for Ghana (for government, consumers and producers) especially in the selected sectors that have direct effects on Ghanaian consumers and the economy at large.

From the analysis so far, it is clearly shown that competition law and policy can have an impact on the economy. However, the impact can be better felt in a country like Ghana only if all key stakeholders, from the State to public enterprises, the private sector and consumers, as well as the media and representatives of the civil society are aware of the importance and the benefits of competition to the economy as a whole, as an engine of sustainable growth and an instrument of the struggle economic development.

Currently, many firms in Ghana are exploiting consumers through high prices and controlled quantities to gain abnormal profits (profiteering) simply because the firms providing those goods and services face little or no competition in the market. Further, the absence of a national competition agency has also contributed to this situation. High cost of capital in Ghana has been one of the limiting factors that prevent entry in to markets by new firms.

Though majority of firms believe that markets in Ghana are contestable, there is a tendency towards concerted practices especially through business associations. Business membership organisations and Associations in certain sectors exert profound influence on prices, qualities and quantities of goods and services.

It emerges that Ghana needs to fast-track adoption of a functional competition regime by embracing and operationalising both the national competition policy and law in the country without further delays. The competition regime is not just about drafting and promulgating competition law but also enforcement of anticompetitive or antitrust policies and laws. The monitoring and enforcement of competition regime in Ghana, should therefore, mean that action is taken to avoid or address unfair and anticompetitive practices in the economy.

One of the main objectives of the competition law in Ghana ought to be to protect consumers' rights and maximise their welfare gains. Ghanaian businesses are generally seen to be supportive of the adoption of a functional competition regime as reflected by their responses.

There is every justification that consumers are exploited in most sectors of the economy thus limiting consumer welfare in Ghana. Ghanaian consumers are generally much concern about prices, quantities and quality of goods and services they patronise in their daily lives. Ghanaian consumers usually compare prices, quantities and quality of products and services provided by competitors before patronising. However, in most case they found that prices and quantities are not competitive in the markets.

Finally, the government needs to embark on consultative process to operationalise the competition regime in the country, especially given the current financial distress that the country is faced with. On the one hand, while it might not be

economically feasible to have a full-fledged and well-endowed national competition agency from the outset, the government should ensure that it has the right structure and functions for it to gradually become effective.

Much higher priority should be given on operationalisation of the national competition policy of Ghana, by identifying competition distorting provisions in policies and legislations, which can unleash greater private sector participation in the economy and create jobs.

Appendix I:

Consumers' Concerns about Price, Quantity and Quality of Goods and Services

Internet & Mobile Services		Poultry		Pure/mineral Water	
Responses	***Percentages***	***Responses***	***Percentage***	***Responses***	***Percentage***
High Quality	55.8%	High Quality	42%	High Quality	52%
Low Prices	33.5%	Low Prices	48%	Low Prices	40%
More Qauntity	10.7%	More Qauntity	10%	More Qauntity	8%
Total	100.0%	Total	100%	Total	100%
Electricity and power		**Sugar**		**Pharmaceutical products**	
Responses	***Percentage***	***Responses***	***Percentage***	***Responses***	***Percentage***
High Quality	44%	High Quality	35%	High Quality	64%
Low Prices	31%	Low Prices	56%	Low Prices	27%
More Qauntity	25%	More Qauntity	9%	More Qauntity	9%
Total	100%	Total	100%	Total	100%
Rice		**Banking**		**Cements**	
Responses	***Percentage***	***Responses***	***Percentage***	***Responses***	***Percentage***
High Quality	54%	High Quality	38%	High Quality	44%
Low Prices	36%	Low Prices	55%	Low Prices	41%
More Qauntity	10%	More Qauntity	7%	More Qauntity	14%
Total	100%	Total	100%	Total	100%
Soft Drink					
Responses	***Percentage***				
High Quality	41%				
Low Prices	51%				
More Qauntity	9%				
Total	100%				

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