

Promoting a level playing field: Why Ghana Needs Competition Law

Rules and regulations are required in every game to ensure fairness. This principle is applicable to elections, whether conducted locally or nationally. The term “level playing field” is used to ensure that all players in the game or market are subjected to the same rules and operating conditions, such that no one gets an unfair advantage over the other. This also means that the stronger competitor, who is usually the incumbent, does not abuse the incumbency or its dominance in the game or market place. Imagine a football match where both teams agree to match-fixing. Such an act disdains not only the supporters and spectators who go to the stadium to watch the match, but also other teams in the tournament. Again, imagine a football tournament without conduct rules or a referee; offside goals could even be allowed.

The doctrine of fairness applies also to the market place where businesses compete with each other. In markets with sufficient conduct rules (competition law or antitrust law), consumers and market players are protected against conducts that would distort the well-functioning of the market. Where no such law exists, there is the tendency that market players competing against each other can meet to agree on prices (price-fixing), split the market so that they do not compete among themselves (territorial allocation) or even reduce output so as to raise prices (output restricting). Such a group of players who decide not to compete through such agreements are called cartels. Abuse of dominance happens when a player enjoying a position of strength (dominant player or monopoly) engages in activities that are either intended to drive competitors out of the business (exclusionary practices) or intended to gain more revenue from the customers (exploitative practices).

Examples of exploitative practices include charging high prices for goods and services to customers and downstream firms, while exclusionary practices include selling products below the cost of production just to collapse competitors (predatory pricing), with prices being raised after competitors have exited the market.

Markets devoid of competition law can also be replete with cartels controlling the supply and manufacture of essential goods and services. Activities of cartels can be so dangerous to the economy in many ways. They can distort the functionality of the market by limiting production or supply just to spike prices. Unfortunately, the Ghanaian market is without competition policy and law, which implies that firms can get away by engaging in such conducts.

It has been nearly two decades since the country started the process to get a functional competition law, the journey is still in transit causing businesses and private sector to wonder why it has taken such a long time to get the law passed. Although Parliament in 2000 passed the Protection Against Unfair Competition Act, 2000 (Act 589), this Act has nothing to do with competition law. Rather, it deals with commercial behaviour such as causing confusion with respect to another person's enterprise or its activities, damaging another person's goodwill or reputation and misleading the public, were outlawed. This means that the Ghanaian businesses and consumer are vulnerable to exploitation by dominant firms and cartels while significant costs build-ups in firms could also be a result of exploitation by upstream dominant firms. The end product would be high prices for consumers.

Joseph Stiglitz made a profound statement when he said 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.”

With Ghana signing, rectifying and as well as hosting the Secretariat of the Africa Continental Free Trade Area (AfCFTA), and the whole continent becoming a single market, it is important that the government ensures the passage of the law to protect Ghanaian businesses from anti-competitive conducts from foreign players.

CUTS Accra with support from the BUSAC Fund conducted evidenced-based research to assess the impact of the non-existence of competition policy and law on Ghanaian businesses and consumers which was published in the book, ***Competition Regime in Ghana: A Need of a Nation*** found out that

- 81% of firms surveyed supported the need for competition policy and law
- 62% of small firms (SME) perceive the threat from bigger firms
- 61% of firms claim they react to competition through increasing investment in innovation
- 23% of firms claim they do a consultation with competitor firms on setting up prices of products or services
- 74.6 % of firms said the competition regime in Ghana will improve competition among producers and sellers

How the absence of the law is affecting the business environment

- Some firms abuse their monopoly or dominance by excluding competitors and charging excessive prices
- Some firms eliminate competition through mergers and acquisitions
- Some businesses meet to fix prices to avoid competition
- There is the presence of cartels in some selected markets controlling the supply of essential goods and services leading to high prices and artificial shortage
- There exist barriers to entry in some markets making it difficult for new players to enter.

COMPONENTS OF COMPETITION LAW

Anti-Competitive Agreements Between Firms (Collusion)

- Import cartels
- Price fixing
- Market sharing
- Bid rigging
- Limiting production
- Refusal to buy or supply
- Tie-in arrangements
- Exclusive-dealing
- Territorial allocation

Abuse of a Dominant Market Position

- Predatory pricing
- Price discrimination
- Excessive pricing
- Abuse of intellectual property monopoly

Regulation of Mergers to Prevent Tactics to Gain Excessive Dominance in a Market

Applies to:

- Total unification of the companies involved
- Buying of sufficient shares in a company so as to have a say in policy formulation



Lessons from Countries with Competition Regime

Countries that have a functional competition regime consisting of competition policy and law have seen the following:

- It allows the private sector to be competitive and vibrant and this, in turn, leads to innovation.
- Countries with competition law are able to attract foreign direct investments since foreign investors want to invest in the market where there are no differential rules for local and foreign players.
- Competition brings about innovation and this leads to better and cheaper ways of doing business. For example, it is now cheaper to own a smart TV and a mobile phone today than a decade ago.
- A better choice for goods and services to producers and consumers as consumers have access to different kinds of goods and services to choose from.
- Competition regime makes the business environment more predictable in a sense that once you work hard, the market would reward you.
- Competition regime sees a functional separation of policymaking, regulation & operational functions of government to ensure that the state does not set rules and yet come to play in the same market.

Current State of the Competition Draft Bill

- The Ministry of Trade and Industry (MOTI) has completed a nationwide stakeholder engagement on the draft bill and it is currently before Cabinet for their approval..

Recommendations to the Government of Ghana

- We propose that cabinet expedite every the action required to get the draft bill to Parliament for their consideration

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