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REPORT ON

World Competition (Antitrust) Day 2017

**THEME: MERGERS AND ACQUISITIONS IN THE ABSENCE OF
COMPETITION (ANTITRUST) LAWS**

5TH DECEMBER, 2017

COCONUT GROVE HOTEL, ACCRA

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1.0 Introduction

The United Nations (UN) on December 5, 1980, adopted the international standard for competition laws under the UN Set on Competition Policy. Ghana as member of the UN has since the early 1990s attempted to have a functional competition law to regulate the conduct of the market. However, Ghana has yet to have a functional competition policy and law. The closest we have is the Protection Against Unfair Competition Act, 2000 (Act 589), which sought to outlaw commercial behavior, 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. This however, does not address the full dimension of competition law.

The World Competition Day is commemorated each year on December 5th to generate government and public awareness about competition policy and law and to galvanize the support for the enactment of competition policy and law in Ghana to guide the conduct of the market and to enhance enabling business environment for the private sector.

The CUTS International as part of activities to mark the day, organized a policy dialogue under the theme ***"Mergers and Acquisitions in the absence of Competition Policy and Law"*** in Ghana.

2.0 Welcome and Opening Addresses

His Lordship Justice Samuel Date Bah, Chairman of the occasion welcomed participants to the dialogue. He explained that since 1984, CUTS has been involved in consumer welfare, researching and advocating in the areas of consumer welfare, competition policy and law, economic regulation, trade and development, good governance and agricultural all in the attainment of the sustainable development goals. He further indicated that CUTS had been involved in advocacy for a functional competition regime when become operation would I result in lower prices for goods and services, better service quality, amongst others. Currently, Ghana does not have a comprehensive competition law but there is a draft policy prepared and ready to be laid before cabinet. He urged all to contribute towards the success of the programme and hoped that at the end of the dialogue fruitful ideas would be developed to aid the fight for a comprehensive competition law.

CUTS Centre Coordinator, Appiah Kusi Adomako, addressing participants, stressed the importance of celebrating the day in Ghana. He indicated that the celebration is even more significant, now that, Ghana is on the verge of having a competition policy or law to regulate the conduct of the market. The World Competition Day is a campaign

initiated to ensure that government realizes the potential benefits for having an effectively implemented competition regime. He further indicated that the stakeholder dialogue was essential for pushing for a functional competition law/policy to ensure fair play in the market place. The policy is critical to explore the ways to which the ongoing mergers (Airtel and Tigo as well as the foreseeable mergers in the banking industry, specifically, that of NIB and ADB to form the National Development Bank) will be structured in a way that will not result in monopoly and create rent seeking in the market place. In concluding, he expressed appreciation for the support received from BUSAC fund and Citi FM and stressed that, CUTS was of the view that competition law is key to promoting fair and efficient market which benefits both producers and consumers.

BUSAC Fund Manager, Nicholas Gebara, drew attention to the fact that mergers and acquisitions were not new to the Ghanaian economy, often taking place in two main sectors, that is the telecom and the banking sector. He stressed that effects of mergers and acquisitions on consumers could be positive or negative depending on the industry and the market competition as well as the degree to which many players were entering the sector. At sector levels, mergers and acquisitions could bring sanity to the sector by pushing for economies of scale and making products and services more efficient and competitive on the market. Mergers and acquisitions can affect consumers negatively in terms of coordinated increase in prices and the formation of monopolies in the economy. He indicated that, for an economy to enjoy the benefits of mergers and acquisitions, it needed to ensure that the end procedure mechanism was put in place. That is, the required laws and policies relevant to the institutions. He further indicated that BUSAC fund had had a positive experience with CUTS in terms of efforts on developing and advocating for a competition policy in Ghana. He expressed happiness about the Governments acknowledgement and support for the process and pledging the support of the private sector in the development of the economy. In concluded by stating that, there was the need for an integrated policy dialogue to promote Ghana as a country with a functional competition regime with a legislated friendly competition law to support the various sectors.

Kofi Amenyah, Legal Director, Ministry of Trade and Industry, speaking on behalf of the Honourable Minister Allan Kyeremateng, in his remarks stressed the relevance of the theme, given the current situation in Ghana. He indicated that Government was appreciative of the efforts of CUTS and BUSAC. He stressed that the process of getting a competition law started a decade ago and a draft competition policy had been presented to cabinet. He further indicated that a healthy competition gives room for innovations and improves technology and an effective competition retains customers and benefit both producers and consumers. Mergers and acquisition are ways through

which firms acquire synergies through either the revenues, expenses or the cost of capital. In conclusion, he stressed that the Ministry was taking steps to ensure that Ghana has a competition law and expressed appreciation for having CUTS as a knowledge partner to develop a vibrant national competition regime.

Yoofi Grant, CEO, Ghana Investment Promotion Council (GIPC), indicated that competition was great and necessary for an efficient sustainable market and thus a desire of every growing economy. It is however essential to be mindful of the fact that competition has arisen in the economic spheres, out of liberalized markets and trade markets. Given that, the President envisions to make the country the business hub in Africa, it is important to be sure where the law comes into effect. He stressed that, the consumer was the most important factor in competition and thus urged consumers to push for the policy and law in the event that government does not. He further indicated that, the country had experienced mergers and acquisitions over the years and as such, the advent of a competition policy would not trigger any issues.

Frances Sackey (Mrs), Acting Head, Legal, Bank of Ghana, speaking on behalf of the Governor of the Central Bank, in her remarks indicated that the theme could not be more appropriate, especially at a time where the minimum capital requirement for banks in Ghana has been increased to GH¢ 400 million, the results of which may be mergers and acquisitions. She stressed that, mergers and acquisitions of institutions regulated by Bank of Ghana are supervised and regulated under the Banks and Specialized Deposit-Taking Institutions Act, 2016 (Act 930). Section 62 of Act 930 deals with the sale of businesses, mergers, amalgamations and reconstructions of banks and specialized deposit taking institutions. The purpose of reviewing merger documents was to ensure fairness and also to make sure consumers and the general public as a whole are not hurt when these transactions go through. In considering whether to approve a proposed merger or acquisitions, there are certain considerations taking into account. These are: the financial and managerial resources; the effects of the proposed transaction on competition in the banking sector; risk to the banking and financial system; and convenience in community serving. In concluding, she expressed the wish of the Bank that CUTS and other stakeholders would come out with the competition law.

3.0 Presentation

Presentations were made on the “Role of Competition Law in Mergers and Acquisitions” and the “Market Distortions and Anti-Competition Practices”.

3.1 Role of Competition Law in 'Mergers and Acquisitions'

Mr. Appiah Kusi Adomako in his presentation indicated that society generally benefits from the outcome of competition. He indicated that studies have proven that competition is better overall compared to monopolies and duopolies. Sighting Tanzania where firm productivity achieved an increase of 13.4% as a result of competition. He stressed that entry of more market players in most sectors had led to price stabilization and efficiency. Thus, in conclusion, he indicated that a competition policy and law is required in Ghana to create a level playing field in the market place and businesses and private sector should rally for the passage of a competition law.

3.2 Market Distortions and Anti-Competition Practices

Mr. Isaac Yaw Obeng indicated that firms are independent when there is competition. An example been where firms determine their own prices based on their cost build-ups. He stressed the effects of price fixing on the economy and indicated that competition laws and policy were essential for correcting the market distortions. He urged MoTI to expedite efforts to ensure the passage of the competition law and policy.

4.0 Panel Discussion

The panel discussions were led by Mr. Emmanuel Doni Kwame (MD, World Trade Center), Mrs. Frances Sackey (Acting Head Legal, Bank of Ghana), Dr. Francisca Kusi-Appiah (Law Lecturer, UPSA) and Mr. Kofi Amenya (Legal Director, MoTI) and moderated by Ms. Vivian Kai Mensah, Head of Business New at Citi fm.

The discussions centered on whether the policy was essential, its content, its effect on the economy and local businesses. The general consensus amongst the panelist was that the policy and law was essential for all sectors, to improve upon competition and protect the consumers. However, there was the need to review the draft policy to ensure that it was in line with current trends. It was further agreed that, capacity building and local content percentage be introduced in the policy as well as the thinking through of a universal policy that incorporates all other policies related to protecting the local businesses.

For the successful implementation of the policy, there would be the need for sensitization, advocacy and media involvement. Also essential will be the periodic monitoring of banks by the Bank of Ghana to ensure adherence.

In relation to its impact on the economy, businesses and consumers, it was agreed that it will be positive as it will reduce hiking of prices and improve quality of products and services as well as ensure a level playing field for all competitors, thus guaranteeing the

existence of SMEs. The policy would also create healthy banks to fund and give loans out to businesses and potentially attract foreign investments.

In conclusion, panelist reiterated the need for clear agreement on whether the country wanted to implement a partial or full competition law which will protect all industries. Panelist also stressed the need for advocacy to be regular. The Ministry of Trade and Industry was urged to ensure the immediate passage of the competition law. Lastly, panelists stressed the need to relook at the process for formation of companies and operation vis-à-vis the development of our own policy.

5.0 Open Discussion

The following were the few issues/suggestions raised during the discussions:

- ❖ The need for the competition law to eliminate disputes especially in the fuel stations;
and
- ❖ The need to consider locations during mergers.

6.0 CLOSING

His Lordship Justice Samuel Date Bah, in closing the event, thanked all speakers and panelists for the insights provided in the area of merger and acquisitions. He expressed his hope that the bill would be passed within the shortest possible time.

Annex 1: Responses During Panel Discussions

QUESTION	RESPONSE
Do we need this policy?	There is the need for this law in all sectors to enable a healthy competition and protect the consumer.
	It is very necessary especially as government involves private sector investment. Without it, we will be losing out and be dictated to.
	The law is long overdue. The draft document needs to be looked at due to changes that has evolved. Fair market is good for business.
What should be seen in this document?	Mergers and acquisition should be involved. Materiality as an issue should be addressed. The threshold on the market should be captured.
How will the law protect the local content (business)?	There is the need for capacity building and introduction of the local content percentage.
	There is the need for a universal policy that will incorporate all other policies related to protecting the local businesses.
	There is the need for sensitization, stakeholder workshop and media involvement.
	Merger detail guideline and carrying out advocacy
	Certain treaties which the government is signatory to needs to be reviewed as this has led to dumping.
	Also, Bank of Ghana regulate, supervise and undertake periodic inspection to banks to ensure they comply with rules and regulations.
How can other regulations be put in place as the law is yet to come? What should be done to ensure anti-competition industry?	The financial and communication industry has build the capacity of its members through supervision whiles a competition law is being prepared.
Will there be a harmonized policy with its independent authority or will it be implemented at individual sector level?	There can be a universal authority but will have sector working in collaboration
What are some of the peculiar things that should run through the various sectors in merging?	In the horizontal merger type, there should be common indicators and market share consideration. In the vertical merger type, there

	<p>should be open market to reduce collision.</p>
	<p>The dominant position should be looked at, that is pre-merger examination should be carried out to identify if the merger will dominate based on threshold.</p>
	<p>Assets of firms as well as minimum turn over should be considered.</p>
<p>What are the impacts of passing the law on the economy, business and the consumer?</p>	<p>Consumer: The consumer should be on board because fair competition is good for consumer in terms of price. It brings about innovation</p> <p>Competition also improves the quality of products and services as producer wants to be on top.</p> <p>It reduces hiking of price</p> <p>Business: Big time players will be regulated to ensure healthy rivalry and fair competition. This will ensure continuous existence of SMEs.</p> <p>Balancing and proper regulation for a level playing field.</p> <p>It will create healthy banks to fund and give loans out to businesses.</p> <p>Economy: It can attract foreign investment.</p>

Annex 2: Institution

Ministry of Trade and Industry
Bank of Ghana
Ghana Investment Promotion Council
BUSAC Fund
US Embassy Accra Ghana
Judicial Service Ghana
Security and Exchange Commission
Ghana Education Service
Gapson Construction Company Limited
World Trade Centre Accra
International Chamber of Commerce
Afri-Invest
Centre for Environmental Law and Development
Zoe Akyeasco Law Firm
National Development Planning Commission
University for Professional Studies Accra
Bentsil Enchil and Lesta
Ntrakwah and Co Law Firm
KALA BASH
University of Cape Coast
University of Ghana
Prudential Bank Ghana Limited
Private Enterprise Foundation
Grape Vine Consult
Ghana Bar Association
Ecobank Ghana Limited
Bank of Ghana
Association of Ghana Industries