Policy Brief

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Absence of Competition Law Enforcement Impacts Key Sectors in Rwanda

TRADE MARK EAST AFRICA

This policy brief presents a brief overview of the state of the national competition regime in Rwanda based on qualitative and quantitative research done by Rwanda Consumer Rights Organisation (ADECOR). The research was carried out in order to assess challenges in the implementation of the competition regime in the country, document anticompetitive practices, and assess consumer perceptions and awareness on competition issues. From this assessment, the implications of anticompetitive practices on Rwanda's economy and its wider integration into the East African Community (EAC) were assessed. Finally policy recommendations on promoting an enabling environment to support the effective implementation of the competition legislations at national and regional level are provided.

Introduction

Rwanda has shown sustained economic growth since 2000 with gross domestic product (GDP) per capita increasing from US$225 in 2000 to US$595 in 2011; with signs of economic transformation across various sectors. There has been an increase in non-farm employment, exports and revenue from domestic taxation. This is in addition to an increase in foreign direct investment (FDI), domestic investment and domestic savings (Abbott 2011; Malunda 2012; NISR 2012).

Although agriculture still provides employment for about 73 percent of the population there has been a strong growth in the service sector, which has overtaken agriculture in terms of contributing to GDP. There is however, little growth in manufacturing.

Methodology

The methodology for this study entailed both qualitative and quantitative methods. Qualitative methods included conducting key informant interviews with government ministries, regulatory agencies, Private sector actors and development partners. The government officials included those from Rwanda Standards Board (RSB), National Bank of Rwanda, Ministry of Commerce (MINICOM), Competition Department, Rwanda Development Board and others. Private sector actors included transport cooperatives members, bankers associations, insurance companies and business people in different sectors of the economy.

Lastly development partners included Department for International Development (DFID), United Nations Development Programme (UNDP), United Nations Economic Commission for Africa (UNECA), United Nations Industrial Development Organisation (UNIDO) and others. Civil society organisations (CSOs) including consumer organisations were also covered. Primary research included a questionnaire survey administered among 106 respondents who were randomly sampled from the different sectors of the economy within Kigali city (capital of Rwanda).

Main Research Findings

Progress in the Implementation of Competition Regime

In Rwanda, there is good political will to establish an appropriate legal framework on competition issues and a number of measures and legal frameworks have been instituted in order to curb anticompetitive practices in the country. The measures implemented so far include: adoption of the Competition and Consumer Protection Policy in 2010 and legislating on Competition and

Consumer Protection law (2012) which provides powers for investigating anticompetitive conduct. In addition, a law establishing National Inspectorate and Competition Authority (NICA) and determining its missions, organisation and functioning has been completed. However, the NICA law is still pending cabinet approval and this limits the ability of the government to fully enforce its mandate to curb anticompetitive practices in Rwanda. Some capacity building of personnel in charge of competition matters from MINICOM has been carried out and public awareness campaign undertaken to provide a platform to identify and address anti-competitive practices in key sectors of Rwanda.

Some of the main challenges with respect to reducing anticompetitive practices in Rwanda include: (i) the low level of awareness on competition law/policy among public and private sectors actors; (ii) lack capacity to investigate hardcore cartels; (iii) having not fully established an independent Competition Authority to implement the law; and (iv) delays by EAC to have fully functional competition commission.

Government Policies Infringing on Competition in Rwanda

Transport Sector Reforms: The recent reforms in the transport sector have left certain players discontent. In a move to organise city transport and de-congest the city, Kigali City council has moved to streamline transport services in Kigali city by awarding tenders to three companies to manage the major city routes using 30-seater mini-buses. However, 18-seater taxi operators have cried foul claiming that they have been thrown out of business after being re-allocated less busy routes due to these reforms. These reforms have negatively affected the incomes and livelihoods of taxi operators.

Investment Policies Using Tax Incentives to Attract FDI: In a bid to attract FDI, Rwanda and other East African countries have provided a number of tax incentives to multinational companies (MNCs) willing to invest in their countries. However, providing tax incentives to compete for FDI often turns out to be a 'race to the bottom' which has seen EAC countries lose money in terms of taxes foregone without proportionate benefits in job creation and income improvement.

A common anticompetitive practices is Double Taxation Agreements (DTAs) signed between EAC countries and tax havens like Mauritius. These DTAs with third party tax havens result in double taxation among EAC countries whereby regional investors are taxed both at home and other EAC destinations where they have invested. This

increases the cost of doing business within the region, limit investments and subsequently job creation across the EAC region.

Fertiliser Supply Policy: The fertiliser supply chain is dominated by government-appointed private companies who have been allocated different districts in which they operate (in competition parlance, this is referred to as 'geographical market allocation'). There are both *pros and cons* of such a policy. The advantage is that government supply of fertiliser and seeds ensure that small holder farmers access good quality inputs, with accompanying free extension services from government agronomists.

On the other hand however, the monopoly of a few government appointed suppliers in input distribution system is embedded with inefficiencies such as delayed input supply, limited outreach to the farmers' villages, unnecessary documentary bureaucracy and insufficient distribution of inputs. This directly impacts on household crop production and hence market surplus. While monopoly is not a problem *per se*, and are encountered often in small markets across developing and least developed countries, the abuse of monopoly power needs to be prevented at all costs – especially in key markets like fertiliser – where the welfare of small producers is at stake.

Insurance Sector Policies: Concerns that could result in lack of competition in the Rwandan insurance sector include the case of the public sector covering medical insurance for its personnel with state owned insurance agencies like Rwanda Health Insurance Fund (RAMA) and Military Medical Insurance (MMI). Given that the government is the largest employer, this regulation may deny the private sector insurers an opportunity to tap into the huge clientele.

Alleged Anticompetitive Practices

Transport Sector: According to Rwanda Bureau of Standards (RBS), anticompetitive practices have existed among fuel dealers within the transport industry. In a bid to out-compete others in the petroleum industry, some companies deliberately lower the price per litre of fuel to below market prices (referred to in competition parlance as 'predatory pricing'). They then subsequently tamper with the fuel pumps to give fuel quantities which are far less than a litre thus cheating motorists who purchase the fuel in the process. The RBS has observed that those selling at a slightly lower price were giving less quantities of fuel to consumers because they tamper with

calibration of their fuel pumps dispensers to deliver less fuel (per litre) than their competitors.

Banking Sector: According to Rwanda Bankers Association (RBA), the main concern within Rwanda's financial markets is the inadequate and unaffordable liquidity. Bankers were concerned that borrowing money remains expensive. Interest rates had risen from seven-eight percent in 2012 to about 10-14 percent in 2013. RBA cited the following challenges leading to the high cost of credit.

Firstly, revenue collections from major government bodies such as Rwanda Revenue Authority (RRA), Rwanda Social Security Board (RRSB) and RAMA are mandatorily kept in the Central Bank (BNR) with most commercial banks acting as channels. In this way the capacity for commercial banks to mobilise enough savings for lending is limited. Buying of various government securities such as treasury bills and bonds was no longer an open auctioning system as previously was the case.

Procurement of treasury bills is subject to negotiations by individual banks based on their working relationships with RRSB. In cases when there is a high demand for liquidity in the market, most banks approach BNR for money; however some banks have a lee way to directly source funds from RSSB, given their long working relationships with RRSB. This leaves an unlevelled ground in the banking sector, especially for borrowing money.

Goods and Services Sector**:** The RBS had alleged unfair trade practices among some players in the juice and cement making factories in the past. Some juice processing factories were diluting ingredients in order to offer low priced juices which the Bureau considered to be flouting the standards.

Regional Non-Tariff Barriers: The Private Sector Federation (PSF) of Rwanda was concerned that regionally, Tanzania was levying high tariffs, i.e. US$500 per truck that enters Tanzania while Rwanda levied only US$167. As a result, the PSF engaged in negotiations to harmonise charges. However, Tanzania did not comply which forced Rwanda to also increase the charges per truck to US$500.

International Markets**:** The PSF is also concerned that market liberalisation had increased occurrence of anticompetitive practices in the country. Opening up of markets has led to dumping of low quality foreign products especially from China. The goods are sold at very low prices (e.g. powdered milk) and purge out higher value local products of Rwanda.

Consultancy Service Industry: PSF is also concerned that in the services sector, particularly provision of consultancy services, Rwandan consultancy firms were being out-competed by foreigners as a result of the skills gap and weakness in English language. PSF observed that unlike Tanzania where all foreign companies are required by law to reserve 51 percent of their shares to local ownership; such a practice was not followed in Rwanda. PSF asserted however, that all foreign companies are required to hire a local person (referred to as 'under-study') for each expatriate position. Under this scheme, the 'understudy' is to be trained to replace the expatriate worker in due course. The above practice is aimed at improving the skills of the local Rwandese. PSF had established a separate arm known as Kigali Arbitration (KIAC) to help the business community with issues arising out of conflicts among themselves.

Highlights from Cross Sectional Perception Survey regarding National Competition Concerns

The research findings show that in terms of perceptions about the level of competition, 95 percent of respondents believe that general level of competition in Rwanda is high. However, despite the fact that a majority of respondents perceive a high level of competition in the country, 95 percent of respondents cite a high negative impact of anticompetitive practices on the daily lives of consumers.

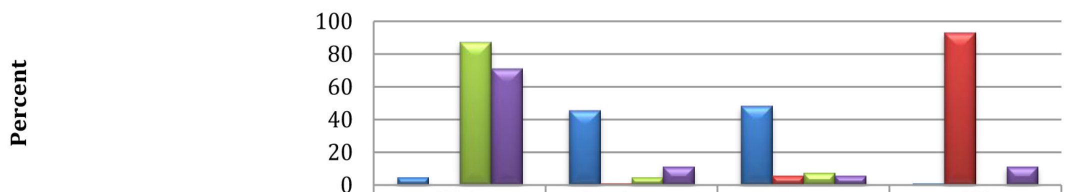
A sectoral breakdown in the level of competition shows that the perceived high competition level is mainly found mainly in the retail and consumer goods sector, perhaps due to the presence of a large number of informal operators. The level of competition is less in telecom and power sectors, which have high capital costs and technology requirements. A recent 'cost of living' study conducted by UNECA shows that in addition to the structural deficits in the production of some goods, limited competition in certain sectors such as housing, education, transport and food are some of the drivers of the high cost of living in Kigali city.

Recommendations

In order to tackle the anticompetitive practices noted above, it is recommended that the Government of Rwanda speeds up the full establishment and functioning of an independent authority to implement the Competition law, i.e. NICA.

In addition, a number of interventions are required to develop a robust competition regime in the country as enumerated:

Perceptions of Level of Competion by Sector(%)



	High	Moderate	Low	Nil
Telecom	5	46	49	1
Power		1	6	93
Retail(Consumer goods)	88	5	8	
Commuter Transport (Bus, Taxi)	71	11	6	11

Source: Author's Computations from Consumer Survey (February 2014)

(i) Carrying out awareness campaigns on competition law/policy targeting civil society, private sector, trade unions, consumer associations and academia;
(ii) Capacity building of government officials on technical aspects of implementation of the competition law;
(iii) Cooperation with sector regulators and aligning functions with the competition regime at the 'regional' level (EAC); and
(iv) Establishment of good working relations with international entities and organisations working on competition issues – like Africa Competition Forum, International Competition Network, UNCTAD, CUTS, etc.

In order to reduce the cost of doing business and enable successful implementation of the EAC customs union, EAC member states need to put more concerted efforts in reducing non-tariff barriers (NTBs) which includes anticompetitive practices as illustrated above. East African countries need to harmonise their national competition legislation and regulatory framework among themselves and also with the EAC regional competition framework. If EAC countries work together against anticompetitive practices it is likely that such practices at the regional level would greatly reduce.

As far as movement of commodities across the region is concerned, revenue authorities in different East African countries should work out ways of harmonising the fees and charges levied on trucks (cross-border transport). This will ease the otherwise high cost of doing business and delays. In a bid to reduce effects of anticompetitive practices on small and medium business, East African governments should involve different stakeholders in relevant policy processes.

Concluding Remarks

Anticompetitive practices emanating from NTBs and tax incentives have considerable implications for the successful implementation of EAC's Customs Union. NTBs across the region are anticompetitive and increase the cost of doing business in the region. In addition, regional competition for FDI using tax incentives is a race to the bottom, which does not benefit the home country and its people. EAC countries should harmonise their tax incentive regimes, eliminate NTBs and market the EAC as a single investment destination in order to prevent the race to the bottom, which results from competing against each other to attract FDI.

EAC countries should sign DTAs among themselves in order to eliminate double taxation of regional investors thus, reducing the cost of doing business across borders in the EAC region. Lastly, the EAC Competition Commission should be established without further delays by the EAC Secretariat to implement the EAC Competition Act, 2008.

This Policy Brief has been prepared by Dickson Malunda (Institute for Policy Analysis and Research Rwanda) for Rwanda Consumer's Rights Protection Organisation (ADECOR) from the findings of the project entitled 'Accelerating the Implementation of EAC Competition Policy and Law' (EACOMP). This Publication was made possible through the support provided by TradeMark East Africa (TMEA). The views/opinions expressed herein are those of the author and do not necessarily reflect the views of TMEA.