

**THE UNIVERSITY OF THE WESTERN CAPE**

**EXAMINING THE SOUTH AFRICAN COMPETITION LAW ENFORCEMENT  
INSTITUTIONAL FRAMEWORK: LESSONS FOR SIERRA LEONE**

**BY**

**ALFRED PAUL JUWAH**

**STUDENT NUMBER: 4004823**



**UNIVERSITY *of the*  
WESTERN CAPE**

**SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE  
DEGREE –LLM INTERNATIONAL TRADE, INVESTMENT AND BUSINESS LAW**

**SUPERVISOR**

**DR. PRECIOUS N NDLOVU**

## **ABSTRACT**

Trade liberalisation, free-market system, privatisation and deregulation have become major steps taken by individual countries to accelerate economic growth. This trend has made competition law and its enforcement institutional framework pivotal, especially so with the advent of the African Continental Free Trade Agreement (AfCFTA). A liberalised trade and a free market system without effective machinery to checkmate the activities of market participants would invariably give rise to anti-competitive practices such as monopolies, abuse of dominant position, cartels, and vertical restraints. These anti-competitive practices have an adverse effect on trade. Sierra Leone has made commitment to liberalise its market space, deregulating and developing the private sector to accelerate economic growth. This goal would be challenging, without an extant competition law statute and an independent enforcement institutional framework to address anti-competitive practices in the country. This thesis proposes a competition law statute with an independent enforcement institutional framework to address anti-competitive practices in the country. It also proposes that the law should conform to the Economic Community of West African States Regional Competition Rules (ECOWAS), and the AfCFTA. Whilst it discussed the benefits of regional competition law regulatory authority, it equally discussed the accompanying challenges. The core recommendation made is that Sierra Leone can learn from the structures of the three specialist competition law institutions of South Africa and design its own structures to suit its needs. The wholesale copying from South Africa is not recommended. Rather, Sierra Leone can adopt different names to the institutions other than the ones used by South Africa, but the substance, powers and functions of those institutions can be similar. It is also recommended that the competition law statute must incorporate all relevant provisions of a modern-day competition law statute and the enforcement institutions must be independent.

## **KEYWORDS**

Competition law, enforcement institutional framework, market efficiency, economic growth, consumer welfare, liberalised and diversified economy, competitive market, advanced competition law regime.



## LIST OF ABBREVIATIONS

AfCFTA -	African Continental Free Trade Area
AU -	African Union
ARG-	Administrator and Registrar General
ASEAN -	Association of South-East Asian Nations
CARICOM -	Caribbean Community and Common Market
CE -	Conseil de l'Entente
CEMAC -	Central African Economic and Monetary Community
CENSAD -	Community of Sahel-Saharan States
CISS -	Comité permanent Inter-Etats de Lutte contre la Sécheresse dans le Sahel
COMESA -	Common Market for Eastern and Southern Africa
COVID-19 -	Corona Virus 2019
CEPGL -	Economic Community of Great Lakes Countries
EAC -	East African Community
ECOWAS -	Economic Community of Western African States
ERCA -	ECOWAS Regional Competition Authority
EU -	European Union
EVD -	Ebola Virus Disease
GATT -	General Agreement on Tariffs and Trade
GATS -	General Agreement on Trade in Services
GDP -	Gross Domestic Product
GoSL -	Government of Sierra Leone
IGAD -	Inter-Governmental Authority on Development
IMF -	International Monetary Fund
IOC -	Indian Ocean Commission

LDCs -	Least Developed Countries
MERCOSUR -	Mercado Común del Sur
MRU -	Manor River Union
MTNDP -	Medium-Term National Development Plan
NATCOM -	National Telecommunications Commission
NPPA -	National Public Procurement Agency
OECD -	Organisation for Economic Cooperation and Development
PPP -	Public Private Partnership
RECs -	Regional Economic Communities
SACU -	Southern African Customs Union
SADC -	Southern African Development Community
SEACF -	Southern and Eastern African Competition Forum
SMEs -	Small and Medium-Sized Enterprises
UEMOA -	West African Economic and Monetary Union
UK -	United Kingdom
UMA -	Arab Maghreb Union
UN -	United Nations
UNCTAD -	United Nations Conference on Trade and Development
USA -	United States of America
WAEMU -	West African Economic and Monetary Union
WAMZ -	West African Economic and Monetary Union
WTO -	World Trade Organisation

## DECLARATION

I, ALFRED PAUL JUWAH hereby declare that this mini- thesis is my original work. All sources cited, used or quoted, have been duly indicated and acknowledged as complete references. This work has never been submitted to any University, College or other institutions of learning for any academic or other awards.



SIGNED

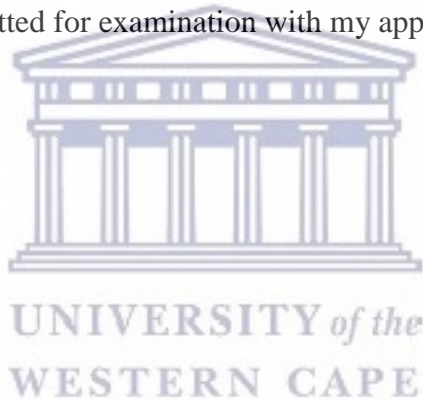
DATED 26<sup>TH</sup> NOVEMBER 2021.

This mini- thesis has been submitted for examination with my approval as University Supervisor.

SIGNED



Dr Precious N Ndlovu



## **DEDICATION**

I hereby dedicated this work to the Almighty God who gave me the grace, courage and direction to have come this far. Without whom, this journey would not have been taken. Also, to my little Aldina.



## ACKNOWLEDGEMENTS

First, I thank the God Almighty for keeping me safe from Covid-19 whilst I was pursuing my course of study.

My wife, Blendina, who would constantly wake me up to get to my books even when there was a long-distance between us.

My little, Aldina, who came just when I was writing conclusions to the final chapter of this study.

My 'J' (Joyce) who, from childhood, has always made me believe in myself.

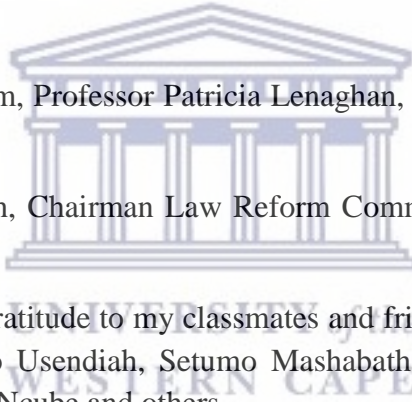
Many thanks to Professor Riekie Wandrag, for coordinating this amazing LLM in International Trade, Investment and Business Law, and who as well stood *in loco parentis* during this entire program.

Many thanks also to my supervisor, Dr Precious N Ndlovu for her insightful comments, corrections and mentorship.

To the tutors in the LLM program, Professor Patricia Lenaghan, Professor Kenneth K. Mwenda, Dr Enga and others.

Many thanks to Martina Kromah, Chairman Law Reform Commission of Sierra Leone for her support in pursuing this program.

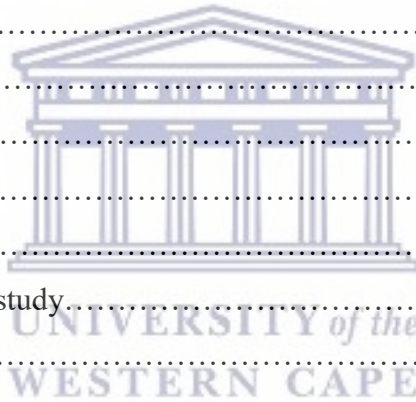
I would also like to extend my gratitude to my classmates and friends: Sia Aidan, Abraham Zaqi Kroma, Albert-Chris Puja, Seno Usendiah, Setumo Mashabathakga, Chido Mafogonya, Dane Humphris, Melanie, Chidocashe Ncube and others.



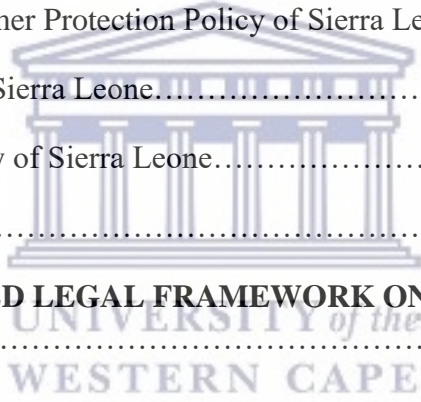


## TABLE OF CONTENTS

<b>ABSTRACT</b> .....	I	
<b>KEY WORDS</b> .....	ii	
<b>ABBREVIATIONS</b> .....	iii	
<b>DECLARATION</b> .....	V	
<b>DEDICATION</b> .....	Vi	
<b>ACKNOWLEDGEMENTS</b> .....	Vii	
<b>TABLE OF CONTENTS</b> .....	Viii	
<b>CHAPTER 1</b>		
1.1 Introduction.....	1	
1.2 Problem statement.....	4	
1.3 Research questions.....	8	
1.4 Objective of the research.....	8	
1.5 Thesis statement.....	9	
1.6 Justification/ significance of study.....	9	
1.7 Literature review.....	10	
1.7.1 Gaps in literature.....	14	
1.8 Scope and limitations of the study.....	14	
1.9 Research methodology.....	15	
1.10 Chapter outline .....	16	
<b>CHAPTER 2: THE EXISTING POLICY AND LEGAL FRAMEWORK ON COMPETITION LAW IN SIERRA LEONE</b> .....		17
2.1 Introduction.....	17	
2.2 The meaning of competition policy: a brief discussion.....	18	
2.3 The meaning of competition law: a brief discussion.....	20	
2.4 The importance of competition law.....	21	
2.5 A brief history of modern competition law.....	24	
2.5.1 A brief history of competition law in South Africa.....	26	



2.6 The existing legal framework on competition law in Sierra Leone.....	27
2.6.1 The telecommunications sector.....	28
2.6.2 Electricity and water regulation.....	29
2.6.3 The Corporate Affairs Commission.....	30
2.6.4 Trademarks.....	31
2.6.5 The banking sector.....	33
2.6.6 Investment promotion.....	33
2.6.7 Public-Private Partnership.....	33
2.6.8 The mining sector.....	34
2.7 The Competition and Consumer Protection Policy of Sierra Leone.....	34
2.7.1 The competition policy of Sierra Leone.....	34
2.7.2 Consumer protection policy of Sierra Leone.....	35
2.8 Conclusion.....	36
<b>CHAPTER 3: THE PROPOSED LEGAL FRAMEWORK ON COMPETITION LAW IN SIERRA LEONE.....</b>	<b>37</b>
3.1 INTRODUCTION.....	37
3.2 An analysis of the competition law provisions in the draft competition Bill of Sierra Leone 2018.....	38
3.3 Competition law and covid-19.....	43
3.4 Sierra Leone’s commitment to regional competition law.....	46
3.4.1 Benefits of regional competition regulatory framework.....	49
3.4.2 Potential challenges of regional competition regulatory framework.....	50
3.5 Competition law and international trade.....	55
3.5.1 Convergence between competition law and international trade.....	55
3.5.2 Divergence between competition law and international trade.....	56
3.6 Conclusion.....	58



<b>CHAPTER 4: AN EFFECTIVE COMPETITION LAW ENFORCEMENT INSTITUTIONAL FRAMEWORK.....</b>	<b>59</b>
4.1 Introduction.....	59
4.2 The Competition Commission of South Africa.....	60
4.2.1 The composition of the Competition Commission.....	63
4.2.2 The complaint procedures of the Competition Commission.....	65
4.2.2.1 Complaints initiated by the Commission.....	66
4.2.2.2 Complaints initiated by private parties.....	69
4.2.2.3 Powers of the Competition Commission.....	70
4.2.2.3.1 Authority to enter and search with a warrant.....	71
4.2.2.3.2 Authority to enter and search without a warrant.....	73
4.3 The Competition Tribunal of South Africa.....	75
4.3.1 Complaints referrals to the Competition Tribunal by the Competition Commission.....	76
4.3.2 Complaints referrals to the Competition Tribunal by private parties.....	77
4.4 The Competition Appeal Court of South Africa.....	79
4.5 The Supreme Court of Appeal of South Africa.....	80
4.6 The Constitutional Court of South Africa.....	81
4.7 Lessons for Sierra Leone from the competition law institutional framework of South Africa.....	81
Conclusion.....	83
<b>Chapter 5: FINDINGS, CONCLUSIONS AND RECOMMENDATIONS: WHAT SHOULD BE REFLECTED IN REGARDS TO THE ENFORCEMENT INSTITUTIONS.....</b>	<b>84</b>
5.1 Summary of findings.....	84
5.2 Conclusion.....	85
5.3 Recommendations.....	87



UNIVERSITY *of the*  
WESTERN CAPE

## CHAPTER ONE

‘The price which society pays for the law of competition, like the price it pays for cheap comforts and luxuries, is also great; but the advantages of this law are also greater still, for it is to this law that we owe our wrongful material development, which brings improved conditions in its train’.<sup>1</sup>

### 1.1 INTRODUCTION

Sierra Leone’s population is 7 092 113.<sup>2</sup> Sierra Leone is largely dependent on the extractive industry as a major source of government revenue.<sup>3</sup> According to Sierra Leone’s Medium-Term National Development Plan 2019-2023 (MTNDP), Sierra Leone’s economy is largely driven by the export-led mining sector and the post-war economic recovery was first driven by agriculture. However, from 2010, the economy has been driven by the mining industry.<sup>4</sup> The over-reliance on the extractive industry such as diamond, iron ore, rutile, bauxite, amongst others makes the country vulnerable to external shocks.<sup>5</sup> The government of Sierra Leone has realised that this problem can be remedied by diversifying and liberalising the economy and creating a competitive market for businesses to thrive.<sup>6</sup>

Despite the Government of the Republic of Sierra Leone’s (GoSL) commitment (in cluster two of MTNDP) to accelerate economic growth,<sup>7</sup> the country still scores very low on global economic and development matrices reports. The World Bank Ease of Doing Business Report 2020 places Sierra Leone 163 out of 190 countries ( and the factors considered include starting a business, operating in a secured business environment, access to finance, dealing with day-to-day operations,

---

<sup>1</sup> Carnegie A ‘The Gospel of Wealth’ (1889)148 *the North American Review* 3. See Carnegie Corporation of New York (2017). Steal magnate Andrew Carnegie wrote his 1889 classic on how the richest in America should give ‘excess wealth’ to the public.

<sup>2</sup> Statistics Sierra Leone: *Sierra Leone 2015 Population and Housing Census-National Analytical Report* available at <https://statistic.sl/images/statisticsSL/Dpcuments/Census/2015/2015-census-national-analytical-report.pdf> (accessed 19 July 2020).

<sup>3</sup> Sierra Leone Extractive Industry Transparency Initiative (SLEITI) available at <http://eiti.org/sierra-leone> (accessed 17 August 2020). Sierra Leone is endowed with rich natural resources. Sierra Leone possess one of the largest rutile reserves in the World and mining is significant to the economy of Sierra Leone. Mineral export contributed about 2.7 per cent to the National GDP and accounts for 91.1 per cent of total exports in 2016.

<sup>4</sup> Sierra Leone’s Medium Term National Development Plan (2019-2023) 18.

<sup>5</sup> African Economic Outlook: Sierra Leone (2018) available at <http://afdb.org/fileadmin/uploads/afdb/Documents/country-notes/sierraleone-country-notes.pdf> (accessed 15 July 2020).

<sup>6</sup> Sierra Leone’s Medium-Term National Development Plan (2019-2023) 67.

<sup>7</sup> Sierra Leone’s Medium-Term National Development Plan (2019-2023) 3.

protecting minority investors, trading across borders and others).<sup>8</sup> This position has been maintained for three consecutive years (that is 2018, 2019 and 2020) without improvement.<sup>9</sup> Similarly, Sierra Leone is ranked 507 out of 611 in the 2018 Global Competitiveness Report.<sup>10</sup> The country was not included in the 2019 report.<sup>11</sup> These reports imply that potential investors and business competitors who might want to participate in the Sierra Leone's market will be reluctant to do so due to the difficulties they will encounter when operating businesses in Sierra Leone. Consequently, there will be fewer businesses which will then create a conducive environment for anti-competitive practices.

In its quest to pave a pathway to a competitive market, Sierra Leone is a member of multinational and regional organisations that promote trade liberalisation, economic competitiveness and integration. In July 1995, the country became a member of the World Trade Organization (WTO) and has been a member of GATT since May 1961.<sup>12</sup> At a continental level, Sierra Leone signed the African Continental Free Trade Agreement (AfCFTA) in July 2018 and ratified the same in April 2019.<sup>13</sup> Also, in May 2019, the Economic Community of West African States (ECOWAS) of which Sierra Leone is a member launched its Regional Competition Authority (ERCA) in Banjul, The Gambia to implement the Regional Competition Rules adopted by the ECOWAS

UNIVERSITY of the  
WESTERN CAPE

---

<sup>8</sup> World Bank Doing Business Report 2020 available at <http://doingbusiness.org/content/dam/doingBusiness/country/s/sierra-leone/SLE.pdf> (accessed 19 July 2020).

<sup>9</sup> Ease of doing business in Sierra Leone available at <http://tradingeconomics.com/sierra-leone/ease-of-doing-business> (accessed 20 July 2020).

<sup>10</sup> Global Competitiveness Report 2018 available at <http://www3.forum.org/docs/GCR2018/05FullReport/TheGlobalCompetitivenessReport2018pdf> (accessed 20 July 2020).

<sup>11</sup> Global Competitiveness Report (2019) 633 available at <http://www3.weforum.org/docs/WEF-TheGlobalCompetitivenessReport2019pdf> (accessed 20 July 2020). Both Sierra Leone and Liberia were not included in the survey for 2019. The index provided in the report is an annual yardstick for policy-makers to look beyond short-term and reactionary measures and thus assess their progress on factor that determined productivity which includes: institutions, infrastructure, ICT adoption macroeconomic stability, health, skills, product market labour, labour market, financial system, market size, business dynamism and innovation.

<sup>12</sup> World Trade Organization: Member Information available at <http://wto.org/english/thewto-e/countries-e/sierra-leone-e.htm> (accessed 20 July 2020).

<sup>13</sup> African Union: 'Agreement Establishing the African Continental Free Trade' available at <http://au.int/en/treaties/agreement-establishing-african-continental-free-area> (accessed 18 September 2020). See also Tralac: 'African Continental Free Trade Area' available at <http://tralac.org/documents/resources/flags2377-african-continental-free-trade-area-fags-june-2018-update/file.htm> (accessed 21 July 2020); tralac: Status of AfCFTA Ratification available at <http://tralac.org/resources/infographic/13795-status-of-afcfta-ratification.htm> (accessed 21 July 2020).

Authority in 2008.<sup>14</sup> The rules are essentially geared towards promoting, maintaining and encouraging competition, enhancing economic efficiency in production, trade and commerce at a regional level. To complement and realise these commitments, Sierra Leone urgently needs to further develop substantive rules on competition law and an enforcement institutional framework, domestically.

Irrespective of the widely accepted goals of competition law such as economic efficiency, wealth redistribution and preservation of liberty, protection of competitors and a broad range of other issues,<sup>15</sup> the realisation of these goals will be far-fetched without fully developing a competition law as well as a well-structured enforcement institutional framework to carry out the substantive issues that the law may provide. Hence, a good institutional design is an integral component of competition policy and competition law enforcement.<sup>16</sup> In the enforcement of competition law, the institutional design is as important as the substantive rules.<sup>17</sup> Therefore, this research is primarily focused on the institutional framework of a competition law regime, examining the South African model, which is comparatively the most advanced in the African continent<sup>18</sup> and what Sierra Leone can borrow from the South African model.

It is, therefore, reasonable to conclude that competition law and a well-structured institutional framework would serve as a catalyst to a competitive market that leads to economic growth and consumer welfare. This is a goal that Sierra Leone should desire to achieve. Competition law

---

<sup>14</sup> Economic Community of Western African States (ECOWAS): 'ECOWAS Regional Competition Authority Launches in The Gambia' available at <http://polity.org.za/article/ecowas-regional-competition-authority-launches-in-the-gambia-2019-05-31> (accesses 22 July 2020).

<sup>15</sup> Wish R & Bailey D *Competition Law* 7 ed (2012) 10-23. See also Dingba N 'Introduction to Competition Law: a Sine qua non to a Liberelised Economy' available at <http://academia.edu/88/22080/The-Need-and-the-Challenges-to-the-Establishment-of-a-Competition-Law-Regime-in-Nigeria> (Accessed 9 September 2020).

<sup>16</sup> Fox E.M. 'Antitrust and Institutions: Design and Change' (2010)41 *Loyola University Chicago Law Journal* 487.

<sup>17</sup> Ndlovu PN *Competition Law and Cartel Enforcement Regimes in the Global South: Examining the effectiveness of Co-operation in South-South Regional Trade Agreements* (Unpublished LLD thesis, University of the Western Cape (2017) 137.

<sup>18</sup> Ten years of enforcement by the South African Competition Authorities: Unleashing Rivalry 199-2009 available at <http://www.comptrib.co.za/content/Documents/Info%20library/Reports/unleashing-rivalry-ten-years-of-enforcement-by-sa-competition-authorities.pdf> (accessed 4 September 2020). See also - Ndlovu P.N 'Competition Law and Cartel Enforcement Regimes in the Global South: Examining the effectiveness of Co-operation in South-South Regional Trade Agreements' (Unpublished LLD thesis, University of the Western Cape, 2017) 72-73, 98-99. Ndlovu, P.N notes that the South African Competition Commission in 2008 was ranked in the same category as the National Competition Authorities of jurisdictions such as Canada, Denmark, Finland, Italy, Japan, The Netherlands, New Zealand and Spain. See further, Competition Commission of South Africa Annual Report (2009)3 available at <http://www.compcom.co.za/assets/uploads/AttachedFiles/MDocuments/10year.pdf> (accessed 4 September 2020).

creates the enabling environment for efficiency in the domestic market and consumer welfare. Suffice it to say that with a well-regulated market, these benefits can be realised in Sierra Leone.

## 1.2 PROBLEM STATEMENT

The GoSL is committed to diversifying its economy to accelerate economic growth and as well build resilience against external shocks.<sup>19</sup> The absence of a diversified economy in Sierra Leone had serious effects on the economy. For instance, between 2014 and 2015, the country faced twin shocks in the fall of the global market price of iron ore which was a major source of government revenue and the outbreak of the Ebola Virus Disease (EVD).<sup>20</sup> Similarly, the outbreak of the Covid-19 epidemic is no exception; hence it exerts negative pressure on Sierra Leone's economy because the Gross Domestic Product (GDP) dropped from 4.2 per cent to -3.1 per cent in 2020.<sup>21</sup> It was also projected that the negative effect will extend to 2021.<sup>22</sup>

Successfully diversifying the economy can be achieved through a conducive atmosphere for businesses to thrive. This atmosphere is created when there is an enabling environment for competitiveness in the market. In this regard, the GoSL has committed itself to promote a competitive, fast-growing and liberal economy led by the private sector.<sup>23</sup>

The above commitments are reaffirmed in Cluster two and three respectively of the MTNDP which deals with diversifying the economy and promoting growth and Economic Competitiveness.<sup>24</sup> These clusters are geared towards transforming Sierra Leone's economy and thereby achieving the government's overarching objectives of delivering on the 17 United Nations (UN) Sustainable Development Goals.<sup>25</sup>

---

<sup>19</sup> Sierra Leone's Medium-Term National Development Plan (2019-2023); World Bank Group: *Sierra Leone Economic Update* (2018) available at <https://openknowledge.worldbank.org/bitstream/handle/10986/30032/127049-WP-Public-Sierraleoneeconomicupdatev.pdf?sequence=1> (accessed 15 July 2020).

<sup>20</sup> African Economic Outlook: Sierra Leone (2018) available at <https://afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/country-notes/sierraleone-country-note.pdf> (accessed 15 July 2020).

<sup>21</sup> Assessment of the Socio-Economic impact of Covid-19 in Sierra Leone (2020) 8-12 available at <https://www.greengrowthknowledge.org/research/research/assessment-socio-economic-impacts-covid-19-sierra-leone> (accessed 3 November 2021).

<sup>22</sup> Assessment of the Socio-Economic impact of Covid-19 in Sierra Leone (2020) 8.

<sup>23</sup> President Bio's Speech on the Opening of the fifth Parliament of the Second Republic of Sierra Leone available at <http://sierraleone.org/speeches/Bio-051018.pd> (accessed on 6 June 2020).

<sup>24</sup> Sierra Leone's Medium-Term National Development Plan.

<sup>25</sup> Sierra Leone's Medium-Term National Development Plan.



Therefore, to achieve these objectives, there is a need for sound competition law and enforcement institutional framework to complement the government's commitments of transforming the economy through diversification and economic competitiveness. Thus, competition law concerns economic competition in a free market coupled with the government's policies and structures through which competition takes effect.<sup>26</sup> It also serves the purpose of remedying some of the instances where the free market system breakdown.<sup>27</sup> Additionally, it can be balanced with other social objectives to meet the needs, aspirations and ideals of all in society in a given time.<sup>28</sup> However, there is no extant competition law legislation in Sierra Leone, although there are policies on Competition and Consumer Protection.<sup>29</sup>

The GoSL in 2018, through the office of the Attorney General and Minister of Justice (Ministry of Justice), took the initiative to develop a competition law.<sup>30</sup> This process led to the development of a Draft Competition Bill.<sup>31</sup>

Consequently, due to the lack of competition law and a robust institutional framework, Sierra Leone is faced with an inefficiently regulated sector that is hamstrung by serious anti-competitive practices, such as, price-fixing cartels and others.<sup>32</sup> Other instances of anti-competitive practices in the country include evidence suggesting that some businesses use political connections by colluding with government Ministries to prevent the granting of licenses to potential competitors in sectors that they have interests in, such as the fisheries sector, food imports and hotels and others<sup>33</sup>. There is also evidence suggesting that some regulatory bodies like the National Telecommunications Commission (NATCOM) that are charged with the responsibility of

---

<sup>26</sup> Southerland, P. & Kemp, K. *Competition Law of South Africa* (2012) 1.1

<sup>27</sup> Colino, S.M *Competition Law of EU and UK* 7 ed(2011) 1.

<sup>28</sup> Brassey M 'Introduction' in Brassey, M. *Competition Law* (2002)1. This description is unique to the South African Competition law, hence it tends to address the economic inequality in the country.

<sup>29</sup>World Trade Organisation: *Trade Policy Review – Sierra Leone* (2017) 43. See also the Sierra Leone's Competition and Consumer Protection Policy (2012).

<sup>30</sup> Forna M 'Building a Genuinely Competitive and efficient Local Business Sector should be the Government of Sierra Leone's' available at <https://www.linkedin.com/pulse/building-genuinely-competitive-efficient-local-business-memuna-forna> (accessed 4 November 2021).

<sup>31</sup> Draft Competition Bill of Sierra Leone 2018; a copy of this Bill is not available online. For the purposes of this study, the researcher had to source a hard copy of the Bill from a State Counsel at the Law Officers' Department, in the Ministry of Justice. Since the first draft, no progress has been made leading to completion of the Bill to be tabled before the Sierra Leone Parliament.

<sup>32</sup> Forna M 'Building a Genuinely Competitive and efficient Local Business Sector should be the Government of Sierra Leone's' available at <https://www.linkedin.com/pulse/building-genuinely-competitive-efficient-local-business-memuna-forna> (accessed 4 November 2021).

<sup>33</sup> Manuel C & Katiyo L DFID: *Business Environment Reform Diagnostic-Sierra Leone* (2017)17.

regulating a particular market have the low capacity in carrying out their work and are prone to regulatory capture, in which case, regulatory agencies become dominated or sympathisers by the businesses they represent.<sup>34</sup>

Moreover, in a press release by Qcell, a newly established mobile telecommunication company dated 15 May 2020 alleged that two older mobile telecommunications companies (Africell and Orange) blocked all calls to and from their network to Qcell on the instructions of the regulatory body, NATCOM.<sup>35</sup> Suffice it to say that these occurrences serve as barriers to a competitive market in Sierra Leone and create the perfect breeding ground for market dominance, monopolies or cartels. Thus, without a competition law and a well-structured institutional framework in place to fearlessly implement the substantive rules, the effect of anti-competitive practices will not only have a ripple effect on the consumers but the economy as well.

Further, even though Sierra Leone's 2018 Draft Competition Bill<sup>36</sup> is a major step towards enacting a competition law statute, it is, however, grossly inadequate, and if certain provisions are not included before it becomes law, it may not achieve the objectives of its enactment. The Draft Bill does not make any provision regarding the goals of the Bill upon becoming an Act. The effect is that if the said Bill is enacted into law, there would be serious implementation challenges. This is because a clear goal provision unambiguously signifies the legislature's intent to regulators and informs market participants of business practices that are prohibited.<sup>37</sup> Comparatively,

---

<sup>34</sup> Manuel C & Katiyo L DFID: *Business Environment Reform Diagnostic-Sierra Leone* (2017) 17. Regulatory Capture otherwise known as Capture Theory is an Economic Theory that postulates government fails where regulatory agencies regulating industries becomes dominated or sympathisers by the businesses they are regulating. The effect is that the agency charged with the responsibility of acting in the interest of the public, will instead act to the benefit of the industry that it is supposed to regulate. When this happen, monopolies will continue to charge high prices. This theory became popularised in the 1970's through the late George Stigler, a Nobel Laureate economist at the University of Chicago being the first to define the term. See Borges M R 'Regulation and Regulatory capture (2017) available at <http://worldacademy.org/files/Colloquium-2017/papers/Regulation-regulatory-capture-M.Borges.pdf> (Accessed 12 September 2020).

<sup>35</sup> The action by NATCOM, Africell & Orange is depriving the customers of their right to communicate-QCELL/ available at <https://snradio.net/the-the-action-by-natcom-africell-orange-is-depriving-the-customers-of-their-right-to-communicate-qcell/> (accessed 5 June 2020).

<sup>36</sup> Draft Competition Bill of Sierra Leone 2018.

<sup>37</sup> Dimgba N 'Introduction to Competition Law: A sine qua non to a Liberalised Economy' available at <http://academia.edu/88/22080/The-Need-and-theChallenges-to-the-Establishment-of-a-Competition-Law-Regime-in-Nigeria> (accessed 9 September 2020).

jurisdictions like South Africa and Nigeria make this provision in their respective competition law legislation.<sup>38</sup>

Additionally, the Draft Bill lacks several important provisions which among other things include – the independence of the Competition Authority, the prohibition of minimum resale price maintenance, and restrictive horizontal practices, as well as making provisions for appeals, and the exemption of professional rules. Without the inclusion of the above provisions in the Draft, the hope of an effective market regulation through competition law would be far-fetched.

Due to the fact that Sierra Leone currently has a Draft Competition Bill, meaning there is no-existing competition law, there is also no independent enforcement institutional framework in existence to address anti-competitive practices. The Ministry of Trade and Industry in Sierra Leone oversees the regulation of anti-competitive practices.<sup>39</sup> The practice of a State Ministry overseeing anti-competitive practices falls short of international standards and best practices and therefore speaks to the core element of an efficient enforcement institutional structure to effectively implement the substantive rules without fear or favour.<sup>40</sup>

Unfortunately, Sierra Leone's Draft Competition Bill only establishes a competition bureau with investigative powers. The Bill does not establish the structure that will be tasked with administrative, investigative and prosecutorial functions. Also, the Bill does not establish a special division in the high Court to adjudicate allegations of anti-competitive practices. These are provisions that are provided for in jurisdictions with advanced competition law regimes like South Africa.<sup>41</sup> The advantages of a structured institutional framework are that it creates the platform through which competition law cases are channelled and dealt with effectively and efficiently.

---

<sup>38</sup> Section 2 of the Republic South Africa Competition Act 89 of 1998 (As Amended); section 2 of the Federal Competition and Consumer Protection Act of Nigeria 2019.

<sup>39</sup> Sierra Leone: *An Investor's Guide* (2019)25 available at [https://slipa.org/wp-content/uploads/33800-Sierra Leone-Government-Guide-d8-print.pdf](https://slipa.org/wp-content/uploads/33800-Sierra-Leone-Government-Guide-d8-print.pdf) (accessed 18 June 2020).

<sup>40</sup> This position has been alluded to by UNCTAD, and it holds that competition authority that has formal independence is often established as an independent institution not physically placed in a government ministry. See UNCTAD Independence and accountability of competition law (2008) 6.

<sup>41</sup> The South African Competition Act, 89 of 1998 establish the Competition Commission that investigates and prosecutes anti-competitive practices, a Competition Tribunal that deals with administrative functions and competition appeals court, a special division in the High Court that deals with appeals from the Competition Tribunal. See – Bleazard, J. 'Pigeon-holed by precedent: form versus substance in the application of South African Competition Law Regimes' in Lewis D (ed) *Building New Competition Regimes*(2013) 83-100.

These lapses, if left unaddressed, will pose a threat to the effective implementation of the substantive rules.

While the above discussion has highlighted the weakness in the Draft Competition Bill, the key focus of this study, however, is to examine the South African competition law institutional enforcement framework pointing out lessons that Sierra Leone can learn from and its shortcomings. In the course of the research, the thesis recommends the development of substantive rules on competition law to be complemented by a functioning institutional framework.

### **1.3 RESEARCH QUESTIONS**

The core research question that this study seeks to answer is: How would a well-structured competition law enforcement institutional framework sufficiently regulate anti-competitive practices in Sierra Leone?

In answering the main research question, the following sub-questions are also addressed in the course of this research:

1. What is the existing legal and policy framework on competition law in Sierra Leone?
2. Whether the proposed legal framework would effectively address anti-competitive practices in Sierra Leone if passed into law?
3. What are the characteristics of an effective competition law enforcement institutional framework and what lessons Sierra Leone can learn from South Africa?
4. What should be reflected in the proposed law with regards to the enforcement institutions?

### **1.4 OBJECTIVES OF THE RESEARCH**

The research will address the following objectives:

1. The key objective of this study is to propose a well-structured competition law enforcement institutional framework through which anti-competitive cases will be effectively evaluated in Sierra Leone. In this regard, this study examines the South African competition law enforcement institutional framework and point out lessons for Sierra Leone and makes recommendations on the institutional framework and substantive competition law that will best suit the Sierra Leone context.

2. This study also examines the regional and continental commitments Sierra Leone has made on competition law and the impact of not having domestic legislation; and most importantly institutional framework to channel complaints on anti-competitive practices. It also examines the interaction between competition law and trade and the impact of Covid-19 on competition law.

## **1.5 THESIS STATEMENT**

This study argues that there is no well-structured competition law institutional legal framework through which cases of anti-competitive practices will be effectively evaluated in Sierra Leone. Therefore, a well-structured institutional framework and robust substantive rules to combat anti-competitive practices will serve as an engine in accelerating Sierra Leone's economy and consumer welfare.

## **1.6 JUSTIFICATION/ SIGNIFICANCE OF STUDY**

Sierra Leone has made several strides domestically and internationally to liberalise trade and diversify its economy. Commitments have been made in policy documents<sup>42</sup> to realise these goals. In achieving these goals, different business players will inevitably show up in the market and will tempt other businesses to engage in anti-competitive practices to protect their space. While ensuring a fair level playing field in the market, the activities of these players should be regulated through competition law and a well-structured institutional framework to effectively address cases on anti-competitive practices.

The significance and relevance of this study will necessitate the enactment of competition legislation with a robust institutional structure to effectively address anti-competitive practices. This process will lead to achieving economic growth and consumer welfare through a market economy in Sierra Leone.

This research serves as a guide to principal drivers of Sierra Leone's competition law and institutional framework, including policymakers, members of parliament, lawyers, the business community and others. Thus, this study provides them with vital information to influence a robust

---

<sup>42</sup> UNCTAD: *Sierra Leone Investment Policy Review* (2010) 76; Sierra Leone's Medium-Term National Development Plan (2019-2023) 67.

competition law institutional structure and substantive rules to address and mitigate anti-competitive practices.

Lastly, due to the dearth in the literature on competition law in Sierra Leone, this study serves as a critical analysis of existing literature and adds to it for future academic researchers and professionals in this domain and thus bridging the information gap and awareness on anti-competitive practices.

## **1.7 LITERATURE REVIEW**

The focus of this research is to argue for the development of an efficient competition law enforcement institutional framework in Sierra Leone to spearhead the regulation of anti-competitive practices and to serve as a vehicle through which the substantive rules on competition law will be implemented and given breath. Also, the development of the substantive rules on competition law and an enforcement institutional framework will complement the several commitments Sierra Leone has made to liberalise trade and diversify its economy which will attract new entrants in the Sierra Leone market. Therefore, this literature review covers the dangers of a liberalised market without a competition law, the enforcement institutional framework as important machinery in the implementation of competition law. It goes further to consider the benefits and challenges of regional competition law. It concludes by highlighting the gaps in the literature specifically in the Sierra Leone context.

As a means of achieving the agenda 2030 target<sup>43</sup>, Sierra Leone has committed to liberalise its economy through the private sector<sup>44</sup> and to diversify the same for sustainable economic efficiency.<sup>45</sup> These commitments require laws to complement the government's effort. Dingba, a foremost competition law expert, argues that governments that have made commitments to liberalise their economies through privatisation might be unwittingly creating new dangers without

---

<sup>43</sup> United Nations (UN) Agenda 2030 for Sustainable Development and the SDGs. The 2030 Agenda includes the UN 17 Sustainable Development Goals (SDGs) and 169 targets were adopted in 2015 by Heads of State and Governments at a special UN Summit. The Agenda is geared towards eradicating poverty and achieving sustainable development by 2030 globally. See at European Union (EU) Environment- Sustainable Development available at <http://ec.europa.eu/environment/sustainable-development/SDGs/index-en.htm> (accessed 21 August 2020).

<sup>44</sup> President Bio's Speech on the Opening of the fifth Parliament of the Second Republic of Sierra Leone available at <http://sierraleone.org/speeches/Bio-051018.pf> (accessed 6 June 2020).

<sup>45</sup> Sierra Leone's Medium-Term National Development Plan; these commitments are found in cluster two and three and talks about diversifying the economy and promoting growth and economic development.

a competition law.<sup>46</sup> Dimgba buttressed this point by arguing that liberalising the economy naturally ushers in place of government monopolies, private players whose key interest is profit-making, devoid of social interest and would not be constrained from engaging in practices like abusive behaviour, price-fixing cartels, excessive pricing and market dominance.<sup>47</sup> He further argues that without competition law, the above practices would not be illegal irrespective of the effects on the economy and consumers.<sup>48</sup> In this respect, Sierra Leone could fit in this context if it liberalises and diversifies its economy without a competition law to checkmate the activities of participants in the market.

Fox, another prominent competition law expert argues that good institutional design is an important factor for good competition policy and enforcement.<sup>49</sup> Fox supports this point by illustrating the example of a good house that must facilitate and empower life within the house.<sup>50</sup> She maintains that this house must fit in the family that lives in it, its aspirations, possibilities and practical limits.<sup>51</sup> These analyses perfectly fit a well-structured competition law enforcement institutional framework. The arguments by Fox are supported by Marcos when he argues that institutional strength is a key option for competition law enforcement and even when there is no existence of competition law.<sup>52</sup> Marcos elaborated on this point by arguing that competition law and policy fails because of poor institutional quality and affects the functioning of a market system. Moreover, independence is an integral aspect of competition law enforcement institutions. Competition law experts like Alves *et al* argue that the institution should be structured enough to be able to make decisions impartially, unhindered not just by political interest but also other

---

<sup>46</sup> Dimgba N 'Introduction to Competition law: a sin qua non to a Liberalised Economy' (2006) available at <http://academia.edu/88/22080/The-Need-and-the-Challenges-to-the-Establishment-of-a-Competition-Law-Regime-in-Nigeria> (accessed 9 September 2020).

<sup>47</sup> Dimgba N 'Introduction to Competition law: a sin qua non to a Liberalised Economy' (2006) available at <http://academia.edu/88/22080/The-Need-and-the-Challenges-to-the-Establishment-of-a-Competition-Law-Regime-in-Nigeria> (accessed 9 September 2020). Although Dimgba N. was writing in the Nigerian context, this situation perfectly fits Sierra Leone, since Sierra Leone government has also committed itself to liberalise trade.

<sup>48</sup> Dimgba N 'Introduction to Competition law: a sin qua non to a Liberalised Economy' (2006) available at <http://academia.edu/88/22080/The-Need-and-the-Challenges-to-the-Establishment-of-a-Competition-Law-Regime-in-Nigeria> (accessed 9 September 2020).

<sup>49</sup> Fox E.M. 'Antitrust and Institutions: Design and Change' (2010)41 *Loyola University Chicago Law Journal* 487.

<sup>50</sup> Fox E.M. 'Antitrust and Institutions: Design and Change' (2010)41 *Loyola University Chicago Law Journal* 487.

<sup>51</sup> Fox E.M. 'Antitrust and Institutions: Design and Change' (2010)41 *Loyola University Chicago Law Journal* 487.

<sup>52</sup> Marcos F. 'Developing Countries Need Competition Laws and Policy' (2006) SSRN *Electronic Journal* 5 available at SSRN: <https://ssrn.com/abstract=930562> (accessed 15 August 2020).

external influence or pressure.<sup>53</sup> Alves *et al* buttressed this position by arguing that the action of antitrust agencies is inherently attached to their ability to act independently, without being subjected to external influence from the companies they supervise or the State.<sup>54</sup> Whilst Kovacic takes this argument further and holds that independence enables the competition institution to resist the pressure of serving special interest at the expense of public welfare and therefore bestows greater confidence and trust in its decisions.<sup>55</sup> This institution must not physically be located in a government ministry.<sup>56</sup> The importance of properly designing a competition law enforcement institutional framework and the need for its independence are features that are equally important in the Sierra Leone context.

Commendably, since the South African competition law regime has been referred to as the most advanced in the continent,<sup>57</sup> Sutherland and Kemp furthered this description by indicating that the enforcement institutional framework is a hierarchy of three specialist institutions that apply and enforce the substantive rules of the Competition Act 89 of 1998 of South Africa.<sup>58</sup> Wilson holds a similar position in his description of the enforcement institutional framework of South African competition law.<sup>59</sup> Similarly, Neuhoff *et al* posit that though the three institutions interact, they are however independent of each other.<sup>60</sup>

Despite the benefits that go with having a competition law enforcement institutional framework, scholars have highlighted that developing and least developed countries (LDCs) face challenges in the implementation.<sup>61</sup> These challenges include lack of competition culture, scarcity of

---

<sup>53</sup> Alves S *et al* 'Principles for the Independence of Competition Authorities' (2015) 11 *Competition Law International* 14.

<sup>54</sup> Alves S *et al* 'Principles for the Independence of Competition Authorities' (2015) 11 *Competition Law International* 1.

<sup>55</sup> Kovacic, W.E 'Competition agencies, independence and political process' in Drexl, J. Kerber, W. & Podszun R. eds, *Competition Policy and the Economic Approach* (2011) 291.

<sup>56</sup> UNCTAD, 'Independence and accountability of competition law' (2008) 6.

<sup>57</sup> Ten years of enforcement by the South African Competition Authorities: Unleashing Rivalry 199-2009 available at <http://www.comptrib.co.za/content/Documents/Info%20library/Reports/unleashing-rivalry-ten-years-of-enforcement-by-sa-competition-authorities.pdf> (accessed 4 September 2020). See also - Ndlovu P.N Competition Law and Cartel Enforcement Regimes in the Global South: Examining the effectiveness of Co-operation in South-South Regional Trade Agreements (Unpublished LLD thesis, University of the Western Cape, 2017) 72-73, 98-99.

<sup>58</sup> Sutherland P & Kemp K. *Competition Law of South Africa* (2000) 11.1.

<sup>59</sup> Wilson, J. 'Institutions, Procedures and Remedies' in Brassey, M. *Competition Law* (2002) 291.

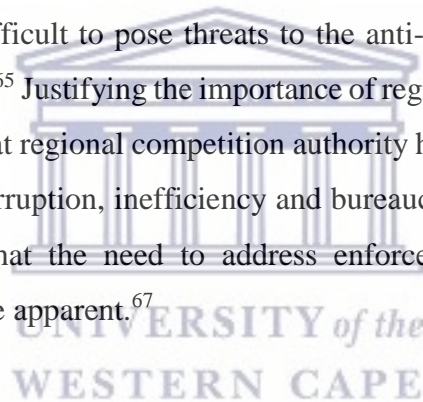
<sup>60</sup> Neuhoff M *et al* 'A Practical Guide to the South African Competition Act' (2017) 14.

<sup>61</sup> OECD 'Global Forum on Competition: Challenges faced by small Agencies and those in Developing Economies' (DAF/COMP/GF/WD) (2017) 3.



resources to fund the implementation of the rules, lack of experience or expertise on the subject matter, bureaucratic and political resistance and vested interest.<sup>62</sup> Irrespective of these challenges, it has been established that some young competition law jurisdictions appear to have overcome these challenges, though their records are short.<sup>63</sup> In this context, Sierra Leone can be no exception to learn from those experiences and put in place a proper competition law regime that is suitable for its situation.

Sierra Leone as a member of the ERCA appears to be setting the stage to overcome major enforcement problems that lie ahead of the proposed competition institution. As argued by Gal and Wassmer, regional competition agreements have great potential to overcome key competition law enforcement problems in LDCs and developing countries and as well furthering the goals of economic development.<sup>64</sup> Gal and Wassmer furthered this argument by noting that small jurisdictions normally find it difficult to pose threats to the anti-competitive conduct of foreign firms due to power asymmetries.<sup>65</sup> Justifying the importance of regional competition law authority, Gal and Wassmer argues also that regional competition authority helps to overcome limitations of existing authorities including corruption, inefficiency and bureaucratic obstacles<sup>66</sup>. As a result of globalisation, Gal also notes that the need to address enforcement problems of LDCs and developing countries has become apparent.<sup>67</sup>



---

<sup>62</sup> OECD 'Global Forum on Competition: Challenges faced by small Agencies and those in Developing Economies' (DAF/COMP/GF/WD) (2017) 5.

<sup>63</sup> Aydin U. & Büthe T. 'Competition Law and Policy in Developing Countries: Explaining Variations in outcomes, Exploring Possibilities and Limits' (2016).<sup>79</sup> *Law and Contemporary Problems* 3 available at <http://scholarship.law.duke.edu/lcp/vol79/iss4/4> (accessed 12 September 2020). See also Kovacic W. E. & Lopez-Galdos M. 'Lifecycles of Competition Systems: Explaining Variation in the implementation of new Regimes' (2016) 79 *LAW AND CONTEMPORARY PROBLEMS* available at <http://scholarship.law.duke.edu/lcp/vol79/iss4/1> (accessed 12 September 2020).

<sup>64</sup> Gal M.S & Wassmer I.F 'Regional Agreements of Developing Jurisdiction: Unleashing the potential in competition policy and Regional Integration Developing Countries' (2012) Bakhom M, Drexl J, Gerber D, Fox E. (eds) available at <http://ssrn.com/abstract=192090> (accessed 30 August 2020).

<sup>65</sup> Gal M.S & Wassmer I.F 'Regional Agreements of Developing Jurisdiction: Unleashing the potential in competition policy and Regional Integration Developing Countries' (2012) Bakhom M, Drexl J, Gerber D, Fox E. (eds) available at <http://ssrn.com/abstract=192090> (accessed 30 August 2020).

<sup>66</sup> Gal M.S & Wassmer I.F 'Regional Agreements of Developing Jurisdiction: Unleashing the potential in competition policy and Regional Integration Developing Countries' (2012) Bakhom M, Drexl J, Gerber D, Fox E. (eds) available at <http://ssrn.com/abstract=192090> (accessed 30 August 2020).

<sup>67</sup> Gal M.S 'Regional Competition Law Agreement: An important step for Antitrust Enforcement' (2009) *University of Toronto Law Journal* 242.

### 1.7.1 GAPS IN LITERATURE

Despite the several commitments of Sierra Leone's government to have a competition law,<sup>68</sup> the Draft Competition Bill and the examples of anti-competitive practices highlighted by Forna,<sup>69</sup> there is no other existing literature suggesting how this law should be tailored to fit in the Sierra Leone context.

Most importantly, even though efficient competition law enforcement institutional framework has become a major topic for most academic research in the area of competition law, there is virtually no literature suggesting how a competition law enforcement institutional framework should be designed to fit in the Sierra Leone context.

A topic like regional competition agreement, competition law and trade are virtually not familiar kinds of literature in Sierra Leone.

Further, even though the draft Sierra Leone's competition Bill is still a working document, there is no literature in existence critiquing and suggesting ways as to how this Bill should be improved.

In this regard, the purpose of this study is to fill in the gaps of the above-unattended issues with a comparative perspective. However, the thrust of this study is to point out lessons from the South African Competition law enforcement institutional framework for Sierra Leone.

### 1.8 SCOPE AND LIMITATIONS OF THE STUDY

This research is primarily focused on providing solutions to this problem by advocating for the development of a well-structured competition law institutional framework through which cases on anti-competitive practices will be effectively and efficiently investigated and adjudicated. This study briefly defines competition policy and law and the importance of competition law, brief history of competition law, examined the existing legal framework, and highlight briefly the

---

<sup>68</sup> Sierra Leone has made several commitments both in its policy documents and International Treaties to have a competition law and they include Sierra Leone: *An Investor's Guide* (2019) 25; President Bio's Speech on the Opening of the fifth Parliament of the Second Republic of Sierra Leone; Government of Sierra Leone Competition and Consumer Policy (2012); WTO: *Trade Policy Review – Sierra Leone* (2017).

<sup>69</sup>Forna M 'Building a Genuinely Competitive and efficient Local Business Sector should be the Government of Sierra Leone's' available at <https://www.linkedin.com/pulse/building-genuinely-competitive-efficient-local-business-memuna-forna> (accessed 4 November 2021). Forna M. mentioned anti-competitive practices in the country such as the private sector that is being hamstrung by cartels price-fixing.

shortcomings of Sierra Leone's Draft Competition Bill and recommendations for its improvement. A perspective of Covid-19 and Competition law, trade and competition law and a brief overview of regional competition law are provided. The characteristics of an effective competition law enforcement institutional framework are examined. This research culminates with findings, recommendations and conclusion.

The primary focus of this study is not on the substantive rules on competition law or the theories on the same. However, where necessary, the substantive rules are briefly alluded to in order to give context to the discussion at hand.

## **1.9 RESEARCH METHODOLOGY**

This research is desk-top and library-based and relies on books, articles, journals report, legislation, case law, internet sources and papers written by authors in the field of competition law. The approach is descriptive but mostly analytical, comparative, and prescriptive. In this regard, this research examines the competition law institutional framework of South Africa and point out lessons that Sierra Leone can learn. The study also briefly examine the existing framework bothering on competition law in Sierra Leone, basic definitions, characteristics of competition law institutions, regional and continental commitments, findings, recommendations and conclusion.

The rationale for using the South African competition law regime is that although South Africa's economy is far advanced than Sierra Leone and one of the goals of the Competition Act 89 of 1998 is to address the issues of economic inequality across all racial divides. However, the Competition Act upholds the fundamental objectives of accelerating economic efficiency and consumer welfare, an overarching objective of Sierra Leone's MTNDP. Further, South Africa has the most advanced competition law regime on the African continent with specialist enforcement institutions.

Secondly, Sierra Leone as an African country itself, has challenges of enhancing the potentials of Small and Medium Sized Enterprises (SMEs) to fairly participate in the market and South Africa being the successful test case on competition law regime in Africa, and the strides it has taken in catering for SMEs and bridging the gap of economic inequality, serves as the most immediate example to emulate.

## 1.10 CHAPTER OUTLINE

### Chapter One

This chapter introduces the research paper and outlines the research problem, questions, objectives, thesis statement, and justification of the study, literature review, and limitations of the study, research methodology, and chapter outline.

### Chapter Two

This chapter deals with the definition of competition policy and law, the importance of competition law, a brief history of competition law and the existing legal and policy framework on competition law in Sierra Leone.

### Chapter Three

This chapter offers a critique of Sierra Leone's draft competition Bill. It briefly examines regional competition law and Sierra Leone's commitment on the same, competition law and Covid-19 and competition law and trade.

### Chapter Four

This chapter examines the South African competition law enforcement institutional framework. In this regard, this thesis highlights the characteristics of an effective enforcement institutional framework and points out lessons that Sierra Leone can learn from.

### Chapter Five

This chapter deals with findings, conclusions and recommendations.



## CHAPTER TWO

### THE EXISTING POLICY AND LEGAL FRAMEWORK ON COMPETITION LAW IN SIERRA LEONE

‘Strong competition policy is not just a luxury to be enjoyed by the rich countries, but a real necessity for those striving to create democratic market economies.’<sup>70</sup> [Further] ‘Competition is the basis of a dynamic market economy....firms inevitably seek to restrict it: more profits can be made by creating a monopoly rather than through better products “so government must set the rules of the game” to maintain a fair playing field and vibrant competition’.<sup>71</sup>

#### 2.1 Introduction

Invariably, market failures due to anti-competitive practices necessitate the development of substantive rules on competition law.<sup>72</sup> The factors leading to this development have usually been to prevent issues like a hike in prices, reduced output, stunted innovation, disregard for consumer welfare and market inefficiency. Effective competition policy may lead to positive welfare effects, costs saving, weeding out inefficient firms, giving larger market shares to more cost-efficient firms and creating a pathway for higher entry in the market by new firms.<sup>73</sup> Notably, the United Nations (UN) and other international organisations like Organisation for Economic Cooperation and Development (OECD) have stressed the importance of competition policy as a key ingredient for the growth and development of nations.<sup>74</sup> Therefore, due to the rising tides of globalisation in the world economy, competition policy and law have become important subjects of discussion in different fora in Sierra Leone (including but limited to the business community, lawyers, parliamentarians and the civil society) This discussion led to the development of Competition and Consumer Policy of Sierra Leone in 2012.<sup>75</sup>

---

<sup>70</sup> Stiglitz J ‘Competing over Competition Policy’ available <http://www.project-syndicat.org/commentary/competing-over-competition-policy> (accessed 28 September 2020).

<sup>71</sup> Stiglitz J ‘Competing over Competition Policy’ available <http://www.project-syndicat.org/commentary/competing-over-competition-policy> (accessed 28 September 2020).

<sup>72</sup> Marcos F ‘Do Developing Countries Need Competition Law and Policy?’ (2006) SSRN Electronic Journal 5 available at SSRN: <https://ssrn.com/abstract=930562> or <https://dx.doi.org/10.2139/ssrn.930562> (accessed 15 August 2020 ).

<sup>73</sup> Marcos F ‘Do Developing Countries Need Competition Law and Policy?’ (2006) SSRN Electronic Journal 5 available at SSRN: <https://ssrn.com/abstract=930562> or <https://dx.doi.org/10.2139/ssrn.930562> (accessed 15 August 2020).

<sup>74</sup> United Nations, the Set of Multilaterally Agreed Equitable Principles and Rules for the control of Restrictive Business Practices on 22 April 1980 and Resolution 35/63 adopted by the General Assembly at its thirty-fifth session, on 5 December 1980. See UNCTAD ‘The United Nations Set of Principles and Rules on Competition’ (2000) TD/RBP/CONF/10/REV.2.

<sup>75</sup> Competition and Consumer Protection Policy of Sierra Leone (2012) 4.

Giving context to the existing legal and policy framework on competition law in Sierra Leone, this chapter commences with a brief definition of competition policy and law, the importance of competition law, a brief history of competition law and the existing policy and legal framework on competition law in Sierra Leone.

## 2.2 The meaning of competition policy: a brief discussion

Competition in the ordinary sense means a struggle to survive or survival of the fittest.<sup>76</sup> In a commercial sense, competition is a process whereby firms fight against each other in order to secure customers for their products through the adoption of any means, whether fair or unfair to maximize profit.<sup>77</sup> The competition puts businesses under constant pressure to offer the best possible range of goods at the best possible prices, because of failure to which, consumers may have the choice to buy elsewhere.<sup>78</sup>

Competition policy has a much wider ambit than competition law. Competition policy is a necessary ingredient to a country's economic policy.<sup>79</sup> It has been described as the prescribed tool kit for the economic development and growth of young countries.<sup>80</sup> Competition policy essentially refers to governmental measures that directly affect the behaviour of firms and the structure of a country.<sup>81</sup> It refers to rules adopted by states and interventions affecting the market.<sup>82</sup> Competition policy often consists of economic policies adopted by the government as a means of enhancing competition in the local and national market such as government policy on deregulation and privatisation.<sup>83</sup> Competition policy also consists of competition law designed to address anti-

---

<sup>76</sup> Islam MR 'A WTO multilateral framework for competition policy and trade-induced development- Debunkig their complementarity in developing countries' (2004) 5 *J World Investment & Trade* 491.

<sup>77</sup> Das T & Kumar U *Competition Policy and Law Made Easy* ed (2001) 6. See also Taylor MD *International Competition Law: A New Dimension for the WTO?* (2006) 8.

<sup>78</sup> European Commission – 'What is Competition Policy?' Available at <https://ec.europa.eu/competition-policy/consumers/what-competition-policy-en> (accessed 22 October 2021).

<sup>79</sup> Marcos F 'Do developing Countries need Competition Laws and Policy?' (2006) 4; available at SSRN: <https://ssrn.com/abstract=930562> or <http://dx.doi.org/10.2139/ssrn.930562> (accessed 15 August 2020).

<sup>80</sup> Marcos F 'Do developing Countries need Competition Laws and Policy?' (2006) 3; available at SSRN: <https://ssrn.com/abstract=930562> or <http://dx.doi.org/10.2139/ssrn.930562> (accessed 15 August 2020).

<sup>81</sup> Das T & Kumar U *Competition Policy & Law Made Easy* ed (2001) 28.

<sup>82</sup> Marcos F 'Do developing Countries need Competition Laws and Policy?' (2006) 5; available at SSRN: <https://ssrn.com/abstract=930562> or <http://dx.doi.org/10.2139/ssrn.930562> (accessed 15 August 2020).

<sup>83</sup> Das T & Kumar U *Competition Policy & Law Made Easy* ed (2001) 28.

competitive business practices by firms and government intervention in the market.<sup>84</sup> This notion is well espoused by Dunne and had this to say:

‘Adam Smith’s striking vision of ‘the invisible hand of the market’ underlies a widely accepted tenet of the functioning of market system: namely, that markets work best when unencumbered by government intervention’.<sup>85</sup>

However, for competition policy and law to thrive, there has to be a functioning market in place. Suffice it to say, that market system pre-exists competition policy;<sup>86</sup> since, with the existence of the market, competition becomes inevitable due to demand and offer forces. A well-functioning market brings the wealth of a society to its highest,<sup>87</sup> and the benefits are equally enjoyed by the consumers.

From the above, it can be safely argued, that a well-designed competition policy informs a robust competition law and institutional enforcement framework to address anti-competitive conduct. Chapter four of this study sheds more light on competition law enforcement institutional framework.

In conclusion, in as much as competition policy has a much wider latitude than competition law and the latter being a component of the former,<sup>88</sup> both are however not opposed to each other, but rather, they are powerful allies; hence, competition law complements the policy. This relationship does not necessarily mean that they do not diverge at some point. Whilst competition law concerns mainly with the behaviour of private entities or market participants, competition policy deals with both private and government actions.<sup>89</sup> Competition policies and law are of crucial importance, hence it helps to improve and secure an investment-friendly climate, sustainable industrialisation and transparency.<sup>90</sup>

---

<sup>84</sup> Das T & Kumar U *Competition Policy & Law Made Easy* ed (2001) 28.

<sup>85</sup> Dunne N *Competition Law and Economic Regulation* ed (2015) 1.

<sup>86</sup> Marcos F ‘Do developing Countries need Competition Laws and Policy?’ (2006) 4; available at SSRN: <https://ssrn.com/abstract=930562> or <http://dx.doi.org/10.2139/ssrn.930562> (accessed 15 August 2020).

<sup>87</sup> Dunne N *Competition Law and Economic Regulation* ed (2015) 1.

<sup>88</sup> Dimgba N ‘Introduction to Competition law: a sin qua non to a Liberalised Economy’ (2006) 8; available at <http://academia.edu/88/22080/The-Need-and-the-Challenges-to-the-Establishment-of-a-Competition-Law-Regime-in-Nigeria> (accessed 9 September 2020).

<sup>89</sup> Dimgba N ‘Introduction to Competition law: a sin qua non to a Liberalised Economy’ (2006) 7-8; available at <http://academia.edu/88/22080/The-Need-and-the-Challenges-to-the-Establishment-of-a-Competition-Law-Regime-in-Nigeria> (accessed 9 September 2020).

<sup>90</sup> Article 45 of the Cotonou Agreement (2000).

### 2.3 The meaning of competition law: a brief discussion

As the wave of addressing anti-competitive practices continues to knock on the doors of different jurisdictions due to globalisation and liberalisation of trade, competition law is becoming an important focus of discussion for governments, academics, professionals and others. Competition law and antitrust law are the same, the usages depend on jurisdictions. For this study, competition law is used in place of antitrust law.

In this regard, competition law consists of rules intended to protect the process of competition to maximise consumer welfare.<sup>91</sup> For Bork, the sole normative objective of competition law is to maximise consumer welfare, best pursued by promoting economic efficiency.<sup>92</sup> It has also been described as the tool used in remedying some of the instances where free-market system breakdown.<sup>93</sup>

A competition law that could fit the unique nature of the South African competition law system is that it seeks to address the economic inequality in the country and is well balanced with other social objectives to meet the needs, aspirations and ideals of all in the society at any given time.<sup>94</sup>

It is therefore submitted that the aim of competition law is to protect or safeguard the competition process itself so that smaller firms can be able to enter and participate in the market. Competition law ensures a level playing field for firms, whether big or small and in the end, it ensures that smaller firms are not expelled from the market by the anti-competitive conducts of bigger firms.

In summary, scholars have either emphasised the welfare benefit or economic benefit of competition law (welfare benefit means the availability of better products and services, wider choice, production efficiency, whilst economic benefit means higher productivity growth, policies that lead to markets operating more competitively) or both and the discouragement of few competitors. This third layer is succinctly put by Fox when she emphasised that competition is concerned to discourage fewness of competitors but place preference for diversity and opportunity

---

<sup>91</sup> Wish R & Bailey D *Competition law* 7ed (2012) 1.

<sup>92</sup> Bork RK *the Antitrust Paradox; A Policy at war with itself* (1978) 427.

<sup>93</sup> Colino SM *Competition law of EU and UK* ed (2011) 1.

<sup>94</sup> Brassey M 'Introduction' in Brassey M *Competition law* (2002) 1.



for the unestablished; second, is the socioeconomic point, especially so from the vantage point of Small and Medium Size Enterprises (SMEs) and the consumers.<sup>95</sup>

## 2.4 The importance of competition law

From the above discussions, it can be said that competition law scholars concur that the process of competition is a route to production efficiency, consumer welfare, better pricing, innovation, entrepreneurship and others. Mahmud and Hossaini in their quest to explain the benefits of competition law to nations succinctly put:

‘Competition is one of the key ways to ensure proper growth and development of a country’s economy. It can ensure consumer welfare and benefit more and can protect their rights. Proper distribution of the resources can be done by competition and competitive market...The aim of competition law is to promote economic development of the country by creating a better environment for the private and public sectors in terms of efficiency in production and pricing decisions and benefit both consumers and producers. The competition is needed to improve productivity, innovation and new entrepreneurship.’<sup>96</sup>

It is submitted that the existence of competition law has the likelihood to inspire international confidence in an economy. Due to the transparency of the system that competition law tends to assure, foreign investors use this assurance to commit capital freely in a country.<sup>97</sup>

Further, the benefits and objectives of competition law have been categorised by competition law scholars under the following rubrics depending on the lens they put on – economic welfare such as consumer, social, public or total welfare; economic efficiency inclusive of allocative, productive, and dynamic; free and fair competition.<sup>98</sup> However, there are other objectives of competition law less often emphasised by competition scholars and it includes freedom (liberty and dispersal of economic power); socio-economic or public interest objectives like employment,

---

<sup>95</sup> Fox EM & Sullivan LA ‘Antitrust – retrospective and prospective: where are we coming from? Where are we going?’ (1987) *New York University Law Review* 936-944.

<sup>96</sup> Mahmud MS & Hossaini RI ‘Development of competition: National and International Perspective’ (2016) *BiLD Law Journal* 100-101.

<sup>97</sup> Dimgba N ‘Introduction to Competition law: a sin qua non to a Liberalised Economy’ (2006) ; available at <http://academia.edu/88/22080/The-Need-and-the-Challenges-to-the-Establishment-of-a-Competition-Law-Regime-in-Nigeria> (accessed 9 October 2020). See also Cotonou Agreement between the European Union and ACP countries (2000).

<sup>98</sup> Lee C ‘The Objectives of Competition law’ (2015) available at <https://researchgate.net/publication/307634289-The-Objectives-of-Competition-Law> (accessed 8 October 2020).

export, promotion, economic development, national economic competitiveness, productivity and growth; economic integration such as common market.<sup>99</sup>

Even though competition law scholars seem to agree on the importance and benefits of competition law, some have paid more attention to consumer welfare or economic efficiency aspect. The other aspect is the social objectives designed to bridge economic inequality, a system unique to the South African competition law regime. No doubt Fox argues that there is a natural fit between more equity and more efficiency in applying competition law in South Africa.<sup>100</sup> Fox further argues, that leaning towards inclusiveness is a better approach as against freedom of action for firms with market power.<sup>101</sup> Competition law scholars like Hovenkamp seems to prefer the consumer welfare aspect of the benefits and had this to say:

‘Few people dispute that antitrust core mission is protecting consumers’ right to the low prices, innovation, and diverse production that competition promises.’<sup>102</sup>

Hovenkamp’s views on the objectives of competition law are supported by the Chicago School which advocate that competition law is concerned with consumer welfare.<sup>103</sup> Consumer welfare or consumer surplus is concerned with the price which an individual is willing to pay as opposed to the amount the individual has to pay.<sup>104</sup> The economic and social approaches are well espoused in the utilitarian ethical approach developed by Mill and Bentham which talks about the amount of

---

<sup>99</sup> Lee C ‘The Objectives of Competition law’ (2015) available at <https://researchgate.net/publication/307634289-The-Objectives-of-Competition-Law> (accessed 8 September 2020).

<sup>100</sup> Fox EM ‘South Africa, Competition Law and Equity: Restoring equity by antitrust in a land where markets were brutally skewed’ (2019) 3 *CPI Antitrust Chronicle* fall 12.

<sup>101</sup> Fox EM ‘South Africa, Competition Law and Equity: Restoring equity by antitrust in a land where markets were brutally skewed’ (2019) 3 *CPI Antitrust Chronicle* Fall 12.

<sup>102</sup> Hovenkamp H *The Antitrust Enterprise: Principles and Execution* (2005) 1.

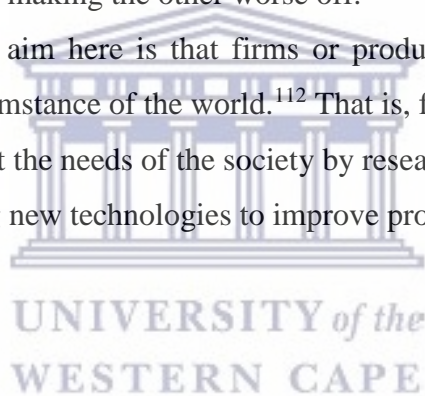
<sup>103</sup> Hulme B ‘The Goals of European Competition Law: Utilitarianism and Deontology’ *The Student Journal of Law* available at <https://sites.google.com/site/349924e64e68f035/ssue-6/the-goal-of-european-competition-law-utilitarianism-and-deontology> (accessed 9 October 2020).

<sup>104</sup> Hulme B ‘The Goals of European Competition Law: Utilitarianism and Deontology’ *The Student Journal of Law* available at <https://sites.google.com/site/349924e64e68f035/ssue-6/the-goal-of-european-competition-law-utilitarianism-and-deontology> (accessed 9 October 2020).

happiness to the largest amount of people.<sup>105</sup> With the lens of competition law, the utilitarian approach is concerned with the greatest benefit to the consumer and society as a whole.<sup>106</sup>

Scholars have categorised economic efficiency into four parts.<sup>107</sup>

- a. Productive efficiency: the aim is that when goods and services are produced at the lowest cost possible.<sup>108</sup> This means that society's wealth is expanded at a minimal rate in production. The effect is that the producer will be unable to sell above cost nor would he sell below cost because the customer will desert him in the alternative for another competitor.<sup>109</sup>
- b. Allocative efficiency: the aim here is to use the available resources adequately or resources allocated to areas it will be fully utilised.<sup>110</sup> This means that it will not be possible to make anyone better off without making the other worse off.<sup>111</sup>
- c. Dynamic efficiency: the aim here is that firms or producers are equipped to meet the changing economic circumstance of the world.<sup>112</sup> That is, firms or producers are equipped enough to be able to meet the needs of the society by research, innovating and developing new products or adopting new technologies to improve production.<sup>113</sup>



---

<sup>105</sup>Hulme B 'The Goals of European Competition Law: Utilitarianism and Deontology' *The Student Journal of Law* available at <https://sites.google.com/site/349924e64e68f035/ssue-6/the-goal-of-european-competition-law-utilitarianism-and-deontology> (accessed 9 October 2020).

<sup>106</sup> Hulme B 'The Goals of European Competition Law: Utilitarianism and Deontology' *The Student Journal of Law* available at <https://sites.google.com/site/349924e64e68f035/ssue-6/the-goal-of-european-competition-law-utilitarianism-and-deontology> (accessed 9 October 2020).

<sup>107</sup> Dimgba N 'Introduction to Competition law: a sin qua non to a Liberalised Economy' (2006) 8; available at <http://academia.edu/88/22080/The-Need-and-the-Challenges-to-the-Establishment-of-a-Competition-Law-Regime-in-Nigeria> (accessed 9 September 2020). See also Wish R & Bailey D *Competition law* 7 ed (2012) 4 – 6.

<sup>108</sup> Hovekamp, H. *Economics and Federal Antitrust Law* (1985) 45-49.

<sup>109</sup> Wish R & Bailey D *Competition law* 7 ed (2012) 4.

<sup>110</sup> Hovekamp, H. *Economics and Federal Antitrust Law* (1985) 45-49.

<sup>111</sup> Whish, R. *Competition Law* [5th ed.] (2005) 2-4; Hovekamp, H. *Economics and Federal Antitrust Law* (1985) 45-49.

<sup>112</sup> Dimgba N 'Introduction to Competition law: a sin qua non to a Liberalised Economy' (2006) 8; available at <http://academia.edu/88/22080/The-Need-and-the-Challenges-to-the-Establishment-of-a-Competition-Law-Regime-in-Nigeria> (accessed 9 September 2020).

<sup>113</sup> Wish R & Bailey D *Competition law* 7ed (2012) 5.

- d. Inter-temporal efficiency: here balance is placed between what is needed now and in the future.<sup>114</sup> The idea is that if all the available resources of the society are used at a given time, there may be a smaller number of resources for a larger population.<sup>115</sup>

Thus, it appears that the categories of economic efficiency are very important to a society at large. Hence it will help facilitate rivalry among producers and enable gains to both the society the producers themselves.

From the foregoing, it is reasonable to conclude that the benefits of competition law are enormous and seems an important pillar in an effective market system leading to economic growth. As the world becomes globalised and liberalisation of the economy becoming a worthy venture for most nations, the tools (that is, competition law) needed to actualise this drive and achieve economic growth of nations is becoming more apparent. Though this journey has been long taken by developed nations, in the last decade on to now, developing and least developed nations seem to be choosing the same path having the benefits in mind.

## 2.5 A brief history of modern competition law

History accounts that the origin of modern competition law can be traced to North America.<sup>116</sup> In 1889, Canada enacted the first modern competition statute.<sup>117</sup> A year later in 1890, the United States of America (US) enacted the Sherman Antitrust Act.<sup>118</sup> The Act was named after Senator Sherman who at the time expressed an opinion that the statute did not deal with new principles of law but old and recognised principles of the common law.<sup>119</sup> Both the US and Canadian competition law statutes prohibited firms from engaging in anti-competitive agreements.<sup>120</sup> For instance, the US used the Sherman Act to curb the influence of major ‘trusts’ (large companies)

---

<sup>114</sup> Dimgba N ‘Introduction to Competition law: a sin qua non to a Liberalised Economy’ (2006) 8; available at <http://academia.edu/88/22080/The-Need-and-the-Challenges-to-the-Establishment-of-a-Competition-Law-Regime-in-Nigeria> (accessed 9 September 2020).

<sup>115</sup> Dimgba N ‘Introduction to Competition law: a sin qua non to a Liberalised Economy’ (2006) 8; available at <http://academia.edu/88/22080/The-Need-and-the-Challenges-to-the-Establishment-of-a-Competition-Law-Regime-in-Nigeria> (accessed 9 September 2020).

<sup>116</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 5.

<sup>117</sup> Shepherd WG & Shepherd JM *The Economics of Industrial Organisation* 5ed (2007) 19.

<sup>118</sup> Sherman Act of 1890 15 U.S.C

<sup>119</sup> Gelhorn E & Kovacic WE *et al Antitrust law and Economics in a Nutshell* 5 ed (2004) 4.

<sup>120</sup> Section 1 of the Sherman Act provides that ‘every contract, combination in the forms of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal’. Section 2 provides that ‘every person who shall monopolise any part of the trade or commerce among the several States, or with foreign nations shall be deemed guilty of felony’.

that controlled important sectors of the economy such as oil, tobacco, railroads and beef.<sup>121</sup> The Sherman Act was designed to deal with the anti-competitive activities of ‘trusts’, hence the reason why the Sherman Act is referred to as an antitrust statute.<sup>122</sup>

The US competition law underwent rapid development in the first half of the twentieth century and thus leading to a wealth of jurisprudence that has influenced the development of competition law in other jurisdictions, including South Africa.<sup>123</sup> It was also in the US that influential theories of competition law emanated.<sup>124</sup> Theories such as the Harvard School and the Chicago School. The Harvard School postulates that the structure of the market determines a firm’s conduct and in turn determines the performance of the market whilst, the Chicago school put more emphasis on allocative efficiency as the sole goal of competition law.<sup>125</sup>

Modern competition law began to gain a foothold around the same time that the Sherman Act was enacted, but the interest was lost towards the end of the nineteenth century.<sup>126</sup> In 1923, Germany enacted the first modern competition law statute in Europe.<sup>127</sup> After the end of the Cold War and the unification of Europe, the European competition law was developed.<sup>128</sup> The development of competition policy and law in the US and Europe considerably served as a precedent to most jurisdictions with competition law regimes today.<sup>129</sup>

The establishment of competition policy and law has also gained importance in developing and LDCs<sup>130</sup> especially so with these countries being members of bilateral and plurilateral trade agreements with competition provisions.<sup>131</sup> Competition law has also gained importance in notable

---

<sup>121</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 5.

<sup>122</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 5. See also *Swift & co v United States* 1905 (196) US 375, the US government secured a major victory before the Supreme Court of Appeal to break the ‘beef trust’ which involved major beef producers fixing prices by using the Sherman Act.

<sup>123</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 6.

<sup>124</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 6.

<sup>125</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 5.

<sup>126</sup> Popadopoulos A *The Role of the Competition law and Policy of the EU in the Formation of International Agreements on competition* (published Ph.D. thesis, London School of Economics and Political Science 2014) 24.

<sup>127</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 6.

<sup>128</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 6

<sup>129</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 6.

<sup>130</sup> Developing countries and least developed countries are now rapidly establishing competition law regimes in their jurisdictions. For example, the South Africa Competition Act 89 of 1998; the Federal Competition and Consumer Protection Act of Nigeria 2019; the Gambia Competition Act 4 of 2007; the Zambia Competition and Consumer Protection Act 24 of 2010; the Kenya Competition Act 12 of 2010 and others.

<sup>131</sup> Popadopoulos A *The Role of the Competition law and Policy of the EU in the Formation of International Agreements on competition* (published Ph.D. thesis, London School of Economics and Political Science 2014) 26.

international institutions including but not limited to the WTO, the World Bank, the International Monetary Fund (IMF) and the OECD.<sup>132</sup>

### 2.5.1 A brief history of competition law in South Africa

The journey to the South African Competition Act is well espoused by Lewis.<sup>133</sup> To give a picture as to how South Africa got to the stage of an advanced competition law regime, it is important to give a brief history that preceded the Competition Act 89 of 1998.

In 1923, the Board Trade and Industry Act<sup>134</sup> was enacted and Board was tasked with the responsibility of researching into different sectors of the economy. This research led to the birth of the first competition legislation in South Africa known as the Regulation of Monopolistic Conditions Act.<sup>135</sup> This Act was however inadequate,<sup>136</sup> as it only dealt with monopolies, and enforcement was done through an administrative process with executive oversight.<sup>137</sup> Consequently, the Act did not gain much success in promoting competition in South Africa, but rather, indirectly allowed monopolies and concentration in key sectors of the South African economy.<sup>138</sup>

In 1975, the Mouton Commission was set up to investigate and report on the competition policy of South Africa.<sup>139</sup> In 1978, the Mouton Commission produced a report<sup>140</sup> which recommended the enactment of the revised legislation.<sup>141</sup> As a result, the Maintenance and Promotion of Competition Act<sup>142</sup> was enacted. The Act established a Competition Board<sup>143</sup> which was empowered to review mergers, restrictive practices and monopoly situations. The provisions of the Act were however not extensive.<sup>144</sup> The Board was a mere administrative body with an

---

<sup>132</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 6.

<sup>133</sup> Lewis D *Enforcing Competition Rules in South Africa: Thieves at the Dinner Table* (2012).

<sup>134</sup> The Board of Trade and Industry Act 28 of 1923.

<sup>135</sup> Regulation of Monopolistic Conditions Act, No. 24 of 1955.

<sup>136</sup> Lewis D *Enforcing Competition Rules in South Africa: Thieves at the Dinner Table* (2012) 18. See also Sutherland P & Kemp K *Competition law of South Africa* (2000) 3-28.

<sup>137</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 8.

<sup>138</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 8. See also Lewis D *Enforcing Competition Rules in South Africa: Thieves at the Dinner Table* (2012) 19.

<sup>139</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 8.

<sup>140</sup> Mouton D *et al Report of the Commission of Enquiry into the Regulation of Monopolistic Conditions, 1955* (1977).

<sup>141</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 8.

<sup>142</sup> The Maintenance and Promotion of Competition Act, No. 96 of 1979.

<sup>143</sup> Section 3(1) of the Maintenance and Promotion of Competition Act No. 96 of 1979.

<sup>144</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 8.

advisory mandate, whilst the Minister of Trade and Industry had the power to accept or reject the recommendations of the Board and had the function of oversight on the enforcement of the Act.<sup>145</sup> Suffice it to say, that the said Act was inefficient.

At the dawn of the democratic era in South Africa and the transition from the apartheid regime to a democratic State, based on the principles of constitutional supremacy and the rule of law, the government faced serious challenges having to do with issues such as skewed patterns of ownership, a concentration of the economy in the hands of few and among others.<sup>146</sup> Through the government, several programs and activities were held to map out ways of addressing anti-competitive activities in the country such as the Reconstruction and Development Programme of 1994 which recommended that the high level of concentration of the South African economy could be addressed through the establishment of an independent competition authority to promote competition.<sup>147</sup> In 1997, the Department of Trade and Industry published a proposed Guidelines for Competition Policy<sup>148</sup> which recommended that competition law should apply to state-owned enterprises and executive oversight no longer form part of the enforcement of competition law. These guidelines ushered in a Competition Bill which led to the enactment of the Competition Act in 1998 and came into effect in 1999.<sup>149</sup>

From the above, it can be concluded that South Africa may have learnt from the successes and pitfalls of the US and Europe's competition law regime. Also, the experience gained in developing their domestic competition law regime may have effectively positioned them to develop a competition law system that is suitable and unique to the South African context. Therefore, there is much for Sierra Leone to learn from the South African competition law system, especially so its institutional framework which is discussed in chapter four of this study.

## **2.6 The existing legal framework on competition law in Sierra Leone**

As indicated in the previous chapter, there is presently no extant legislation on competition law in Sierra Leone. However, since the overarching objectives of successive governments have been to

---

<sup>145</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 9.

<sup>146</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 9. See also Lewis D *Enforcing Competition Rules in South Africa: Thieves at the Dinner Table* (2012) 6 – 8.

<sup>147</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 10.

<sup>148</sup> Proposed Guidelines for the Competition Policy: A Framework for competition, competitiveness and Development, 27 November 1997.

<sup>149</sup> Kelly L *et al Principles of Competition law of South Africa* (2017) 10.

lead Sierra Leone to economic growth, steps have been carefully taken to realise this goal. In this regard, provisions enabling competition have been provided in piecemeal legislation on some of the sectors of the economy. For this study, selected sectors and legislation are discussed below.

### **2.6.1 The telecommunications sector**

Before 2006, consumer access to basic telecommunications services in Sierra Leone was akin to luxury as opposed to necessity. This was the period when only one mobile telecommunication company Celtel dominated the market and was later joined by another company Africell. The enactment of Sierra Leone's Telecommunications Act in 2006, was the dawn of consumer access to basic telecommunications services in the country.<sup>150</sup> The Act established the National Telecommunication Commission (NATCOM) whose responsibilities are to issue licenses, regulate telecommunications operators, promote access to basic telecommunication services, and ensure fair competition for the benefit of investors, among others.<sup>151</sup> Section 9 of the Act unambiguously provides that it is the function of NATCOM to promote fair competition among telecommunications operators.<sup>152</sup> However, the Act does not prohibit any specific anti-competitive conduct among companies operating in the telecommunications sector. This is a major weakness in this Act.

Although the Act ushered in new participants in the telecommunications market, however, these new participants in the telecommunications sector have not been able to participate freely. For example, as recent as 15 May 2020, NATCOM was accused by a new mobile company (Qcell) of encouraging anti-competitive practice in a press release.<sup>153</sup> The press release stated that these two older companies, that is Africel and Orange, blocked calls to and from the new company.<sup>154</sup> Suffice it to say that promoting competition in this sector has been challenging for NATCOM.

---

<sup>150</sup> The Sierra Leone Telecommunications Act 9 of 2006 (as amended) by the Telecommunications (Amendment) Act 1 of 2015.

<sup>151</sup> The long title of the Telecommunications Act of Sierra Leone 2006 (as amended).

<sup>152</sup> Section 9 of the Telecommunications Act of Sierra Leone 2006 (as amended),

<sup>153</sup> The action by NATCOM, Africell & Orange is depriving the customers of their right to communicate-QCELL/ available at <https://snradio.net/the-the-action-by-natcom-africell-orange-is-depriving-the-customers-of-their-right-to-communicate-qcell/> (accessed 5 June 2020).

<sup>154</sup> The action by NATCOM, Africell & Orange is depriving the customers of their right to communicate-QCELL/ available at <https://snradio.net/the-the-action-by-natcom-africell-orange-is-depriving-the-customers-of-their-right-to-communicate-qcell/> (accessed 5 June 2020).



## 2.6.2 Electricity and water regulation

In 2011, the Sierra Leone Electricity and Water Regulatory Commission Act was enacted.<sup>155</sup> This Act established the Sierra Leone Electricity and Water Regulatory Commission and it was tasked with the responsibilities of regulating the provision of electricity and water services in the country.<sup>156</sup> As a means of facilitating better services to the public and perhaps to reduce the serious dissatisfaction regarding the provision of these services especially in the main capital city, the legislature thought it fit to discourage monopoly in the supply of these services and thereby included a provision to encourage competition for efficient and quality delivery of these services. Section 14 of the Act provides that one of the functions of the Commission is to ensure that the conditions for effective competition in the market exist.<sup>157</sup> It further provides that the Commission should take into account whether, in the exercise of its powers, such actions might reduce competition.<sup>158</sup>

Section 57 prohibits public utility from engaging in any activities whether by an act or omission to unfairly prevent, restrict or distort competition with regards to any utility service provided by that public utility.<sup>159</sup> Section 57(4) categorise the act or omission to include, first, abuse by the public utility either alone or with others with the intent to unfairly prevent competition; secondly, entering into any agreement or engaging in any unconcerted practice with another to unfairly prevents, or distort competition; moreover, the implementation of anti-competitive changes in the market, like anti-competitive mergers and acquisition in a relevant sector.<sup>160</sup>

Sections 12 (2) (e) of the Sierra Leone Water Company Act of 2017 is also in line with the provision highlighted in section 14 of the Sierra Leone Electricity and Water Regulatory Commission Act above when it provides that the Sierra Leone Water Company (a state-owned enterprise<sup>161</sup>) should encourage private sector participation in the provision of safe water supply.<sup>162</sup> Similarly, section 11 (2) (a) (iii) of the National Electricity (Amendment) Act of 2018 provides

---

<sup>155</sup> The Sierra Leone Electricity and Water Regulatory Commission Act 13 of 2011.

<sup>156</sup> The long title of the Sierra Leone Electricity and Water Regulatory Commission Act 2011.

<sup>157</sup> Section 14 (a) of the Sierra Leone Electricity and Water Regulatory Commission Act 2011.

<sup>158</sup> Section 14 (b) of the Sierra Leone Electricity and Water Regulatory Commission Act 2011.

<sup>159</sup> Section 57 of the Sierra Leone Electricity and Water Regulatory Commission Act 2011.

<sup>160</sup> Section 57(4) (a)- (c) of the Sierra Leone Electricity and Water Regulatory Commission Act 2011.

<sup>161</sup> Section 2 of the Sierra Leone Water Company Act 4 of 2017.

<sup>162</sup> Section 12 (2) (e) of the Sierra Leone Water Company Act 4 of 2017.

that the electricity company (a state-owned enterprise<sup>163</sup>) may agree with third parties on the sale of electricity to consumers and other related matters.<sup>164</sup> However, neither the Water Company Act, the National Electricity (Amendment) Act, nor the National Electricity Act prohibits any specific anti-competitive conduct. Also, whilst the provisions seem to encourage private sector participation in the provision of water and electricity services to consumers, section 11 (2) (a) (iii) of the National Electricity (Amendment) Act however amounts to an anti-competitive agreement.

Anti-competitive agreements are agreements that substantially prevent, restrict, or lessen competition and some anti-competitive agreements may be classified into horizontal and vertical agreements.<sup>165</sup> In this regard, Sierra Leone's draft competition Bill prohibits these sorts of agreements as its clearly prohibited vertical agreements.<sup>166</sup>

In sum, though the enactment of the above legislation is a commendable move by the GoSL to solve the decade-long problems of access to electricity and water supply, the legislation (except for section 57 of the Electricity and Water Regulatory Act) should however specifically prohibit anti-competitive conducts as a means to attract and not to discourage new participants in the market.

### **2.6.3 The Corporate Affairs Commission**

In 2009, the Companies Act was enacted and established the Corporate Affairs Commission.<sup>167</sup> The key task of the Commission is to regulate, supervise the incorporation and registration of companies under the Act.<sup>168</sup> To create a platform for competition and thereby allow new participants that might want to compete in the Sierra Leone market, the Corporate Affairs Commission is further given the responsibility to deal with all mergers and acquisitions applications, processes and procedures to both domestic and foreign companies that may desire to merge or acquires companies in Sierra Leone.<sup>169</sup>

---

<sup>163</sup> Section 2 of the Sierra Leone National Electricity Act 16 of 2011.

<sup>164</sup> Section 11 (2) (a) (iii) of the National Electricity (Amendment) Act 3 of 2018.

<sup>165</sup> Philippine Competition Commission on anti-competitive agreements available at <https://www.phcc.gov.ph/wp-content/uploads/2017/04/PCC-MODULE-2-1> (accessed 1 November 2021).

<sup>166</sup> Section 1 & 30 of the Sierra Leone draft competition Bill 2018.

<sup>167</sup> Section 2 of the Sierra Leone Companies Act 5 of 2009.

<sup>168</sup> Section 8 of the Sierra Leone Companies Act 5 of 2009.

<sup>169</sup> Sections 41-57 of the Companies Regulations, Statutory Instrument of Sierra Leone 5 of 2015.

Mergers and acquisitions must be carefully handled and regulated. If not well regulated, this will create the likelihood of anticompetitive conduct in the market.<sup>170</sup> For example, when Africell acquired Tigo (another telecommunications company) in 2009, one may want to question whether that acquisition was well evaluated and whether it was ascertained that it did not amount to monopoly at the time.<sup>171</sup> Therefore, the Commission must be armed with the required expertise to handle the process. Whether the Commission is effectively dealing with mergers and acquisitions in Sierra Leone is a fact difficult to evaluate, since there are currently few companies existing in the country. Presently, the Corporate Affairs Commission is yet to develop statistics to inform the public, the business and the international community on the mergers and acquisitions evaluated so far. Such lapses cast doubts on the effectiveness of the Commission in dealing with mergers and acquisitions.

#### 2.6.4 Trademarks

As a means of protecting the registration and regulation of trademarks in Sierra Leone, the Trade Marks Act was enacted in 2014.<sup>172</sup> This Act established the trademarks registry, which shall be housed in the Intellectual Property Agency.<sup>173</sup> However, the Intellectual Property Agency Act which should house the trademarks registry is yet to be enacted. The registration of trademarks is currently done by the Administrator and Registrar General (ARG) in Sierra Leone.<sup>174</sup>

According to the Trademark Act, the registrar who heads the trademarks registry is responsible for the registration of trademarks and the administration of registered trademarks.<sup>175</sup> Therefore, to guarantee competition in the industry, the Act makes it unlawful for any act of competition that is contrary to the honest practices in industrial or commercial matters.<sup>176</sup>

---

<sup>170</sup> Neuhoff M *et al* *A Practical Guide to the South African Competition Act* ed (2017) 179.

<sup>171</sup> 'Africell buys Tigo' *Awoko News Paper* 30 July 2009 available at <https://www.awokonewspaper.sl/africell-buys-tigo> (accessed 1 November 2021).

<sup>172</sup> The long title of the Sierra Leone Trade Marks Act 8 of 2014. Also, section 60 of the Trade Mark Act of 2014 repealed the Trade Marks Act, Chapter 244 and the Merchandise Marks Act Chapter 245 of the laws of Sierra Leone 1960.

<sup>173</sup> Section 20 (1) of the Trade Marks Act of Sierra Leone 2014.

<sup>174</sup> Sierra Leone Presentation on the Challenges in the Formulation and Implementation of National Intellectual Property Policies and Strategies available at <https://wipo.int/endocs/mdocs/aspac/en/wipo-inn-tyo-12/wipo-inn-type-12-ref-+3sierr-lene.pdf> (accessed on 19 October 2020).

<sup>175</sup> Sections 20 (2) & (3) of the Trade Marks Act of Sierra Leone 2014.

<sup>176</sup> Section 19 of the Trade Marks Act of Sierra Leone 2014.

In this respect, acts deemed to constitute acts of unfair competition include acts that will create confusion by whatever means with the establishment, the goods, industrial or commercial activities of a competitor; false allegation in trade with intent to discredit an establishment, the goods, or industrial or commercial activities of a competitor; indications or allegations, the use of which during the trade is likely to mislead the public regarding its nature, manufacturing process, characteristics, suitability of purpose or the quantity of the goods.<sup>177</sup>

Even before and after the enactment of the Trademark Act of 2014, several issues in dispute on trademarks have arisen in the country. In the decided case of *Wadi Aboud & Sons (SL) LTD v Shyam Kanayala Dewani* Justice SM Koroma JA (as he then was) opined that it is often the advantage of individual traders to obtain benefit from work done by other traders in establishing a market for a particular type or style of goods or services.<sup>178</sup> Therefore, this sort of act is always controlled by law.<sup>179</sup> He suggested that the first aspect of control should be designed to increase competition between enterprises to ensure that the benefits of free trade are made available to the consumer; whilst the second is to prevent competition that seeks to make unfair use of another trader's effort.<sup>180</sup> This point had long been clarified by Beoku-Betts J in *T. Choitrams and Sons v Registrar General* when he opined that the owner of the trademark owns the name, the mark and goodwill.<sup>181</sup>

Similarly, Browne-Marke J (as he then was) in *Michael Aboud and Sons v Pee Cee and Sons (Pantap Store)* held that a person that uses a registered mark that so nearly resembles the registered mark belonging to another trader calculated to deceive and mislead the public infringes the other trader's proprietary right to his trademark.<sup>182</sup>

It is therefore submitted that the effective implementation of the provision on competition in the Trademarks Act by the ARG is a fact difficult to evaluate, since the Intellectual Property Agency is yet to be established, and the office of the ARG has a lot of other responsibilities to address.

---

<sup>177</sup> Section 19(2) (a)-(c) of the Trade Mark Act of Sierra Leone 2014.

<sup>178</sup> *Wadi Aboud & Sons (SL) LTD v. Shyam Kanayala Dewani* Case No: 070/16 para 25.

<sup>179</sup> *Wadi Aboud & Sons (SL) LTD v. Shyam Kanayala* para 25.

<sup>180</sup> *Wadi Aboud & Sons (SL) LTD v. Shyam Kanayala* para 25.

<sup>181</sup> *T. Choitrams & Sons v. Registrar-General* (1964/66) ALR Sierra Leone series 253.

<sup>182</sup> *Michael Aboud & Sons v. Pee Cee and Sons (Pan Tap Store)* 1970-71 ALR S.L Series 130.

## **2.6.5 The banking sector**

Subsidiaries of foreign banks are eligible to obtain licenses from the Central Bank of Sierra Leone to operate once all the required conditions are met.<sup>183</sup> Suffice it to say that such a move encourages competition in the banking sector in Sierra Leone. The Banking Act of Sierra Leone 2019 further makes it clear that foreign banks and international financial institutions can open an account with the Central Bank.<sup>184</sup>

## **2.6.6 Investment promotion**

Though the Sierra Leone Investment Act does not specifically make provision on competition issues, it does however appear to encourage competition. It allows any investor whether foreign or domestic to invest in any legitimate form of business in Sierra Leone.<sup>185</sup> Section 11 (2) of the Sierra Leone Investment and Export Promotion Agency also encourages new participants in the Sierra Leone market.<sup>186</sup>

## **2.6.7 Public-Private Partnership**

The Public-Private Partnership Act (PPP) creates the pathway towards competition in PPP transactions or selection processes and award proceedings.<sup>187</sup> There is only one unit of the PPP and is located at the Office of the President tasked with the responsibilities of managing the process to the conclusion of PPP agreements and projects.<sup>188</sup> Although the PPP Act does not provide any specific uncompetitive act, it does in a way when it provides that the Sierra Leone Public Procurement Act of 2004 (as amended) shall apply to the rights and enforcement powers of the National Public Procurement Agency (NPPA) of its implementation duties in the PPP Act.<sup>189</sup> During tender awards or bids, the Public Procurement Act of 2004 prohibits uncompetitive conducts like collusive tendering, price-fixing and encourages competitive tendering or bidding both domestically and internationally.<sup>190</sup>

---

<sup>183</sup> Section 8 (2) of the Sierra Leone Banking Act 6 of 2019.

<sup>184</sup> Section 6 of the Sierra Leone Banking Act 5 of 2019.

<sup>185</sup> Section 4 of the Sierra Leone's Investment Promotion Act 10 of 2014.

<sup>186</sup> Section 11(2) of the Sierra Leone Investment and Export Promotion Agency Act No.3 of 2007.

<sup>187</sup> Section 38 to 52 of the Sierra Leone Public Private Partnership Act 11 of 2014.

<sup>188</sup> Section 26 of the Public Private Partnership Act of Sierra Leone 2014.

<sup>189</sup> Section 38(c) of the Public Private Partnership Act 2014.

<sup>190</sup> Sections 25(2)(b)(v);33(1)(a)(d);34(3);35(1)&(2);38-40 &48(1) of the Sierra Leone Public Procurement Act 14 of 2004.

### **2.6.8 The mining sector**

As an important sector to the economy of Sierra Leone, the Mines and Mineral Act of 2009 promotes both local and foreign investment in the sector.<sup>191</sup> In this regard, promoting both local and foreign investors to participate in the sector implies creating a platform for competition, and if properly managed will help attract serious participants in the sector, which will, in turn, accelerate the economy of Sierra Leone.

## **2.7 The Competition and Consumer Protection Policy of Sierra Leone**

In 2012, the GoSL developed the Competition and Consumer Protection Policy.<sup>192</sup> In developing this policy, the government believes that competition and consumer protection policy and laws would provide the necessary framework to meet the needs of Sierra Leoneans and to foster the economic growth of Sierra Leone as a whole.<sup>193</sup> In developing the policy, the government was desirous of dismantling ‘artificial’ obstacles to market entry, ‘man-made’ cost of doing business, reduction of the concentration of capital and economic power in the hands of few, creating access to credit to small and medium-sized enterprises and others.<sup>194</sup>

### **2.7.1 The competition policy of Sierra Leone**

As an overarching goal of achieving sustainable development, the GoSL in developing the policy believed that competition policy will help attract foreign direct investment, strengthen the private sector, reduce poverty, boost the small and medium enterprises and enable trade liberalisation by removing anti-competitive barriers.<sup>195</sup> Therefore, the competition policy aims at enhancing consumer welfare, increasing market efficiency and facilitating the growth of small and medium-sized enterprises.<sup>196</sup> The government further believed that the effort of reducing the cost of doing business could be boosted by an appropriate competition policy and laws.<sup>197</sup>

In this regard, the government hinges the competition policy on the following specific objectives.

In summary, the objectives include:

---

<sup>191</sup> The long title of the Mines and Minerals Act 12 of 2009.

<sup>192</sup> The Sierra Leone Competition and Consumer Protection Policy (2012).

<sup>193</sup> The Sierra Leone Competition and Consumer Protection Policy (2012) 8 – 9.

<sup>194</sup> The Sierra Leone Competition and Consumer Protection Policy (2012) 5.

<sup>195</sup> The Sierra Leone Competition and Consumer Protection Policy (2012) 5 – 9.

<sup>196</sup> The Sierra Leone Competition and Consumer Protection Policy (2012) 12.

<sup>197</sup> The Sierra Leone Competition and Consumer Protection Policy (2012) 8.

- a. to promote productive, dynamic and allocative efficiency;
- b. to protect consumers;
- c. to promote trade integration within the economic union of free trade, facilitate economic liberalisation, deregulation and reduction of trade barriers;
- d. to ensure equity and fairness in the market and protection of public interest;
- e. to protect opportunities for small and medium-sized enterprises entry into market growth; and
- f. to support institutional arrangements to enforce competition law and among others.<sup>198</sup>

Further, in its quest to have a robust competition policy, the GoSL provides guiding principles to complement the objectives and are as follows:

- a. unfettered competition to accelerate competitiveness in all sectors of the economy;
- b. transparent and unbiased application of competition rules;
- c. preventing conducts aim at discouraging competition and;
- d. Public interest and welfare gains of the society to reign supreme in pursuit of combating anti-competitive practices.<sup>199</sup>

From the above, it can be submitted that Sierra Leone stands a lot to benefit if this policy is effectively implemented and the rules on the same and enforcement institution framework are put in place. Thus, there is much correlation between competition policy and economic growth.

### **2.7.2 Consumer protection policy of Sierra Leone**

The GoSL described consumer protection policy as principles adopted to maintain market and non-market activities, especially regarding the wider choice in product, greater access to products, fair terms on access, ensuring that the products are safe for consumption and rights of redress by consumers.<sup>200</sup> The consumer policy of Sierra Leone, therefore, aims to promote consumer interest especially the vulnerable or disadvantaged<sup>201</sup> or those with low economic means.

Therefore the following are some of its specific objectives:

<sup>198</sup> The Sierra Leone Competition and Consumer Protection Policy (2012) 12 - 13.

<sup>199</sup> The Sierra Leone Competition and Consumer Protection Policy (2012) 13.

<sup>200</sup> The Sierra Leone Competition and Consumer Protection Policy (2012) 9.

<sup>201</sup> The Sierra Leone Competition and Consumer Protection Policy (2012) 10.

- a. to prevent the production, sale and supply of harmful and defective goods to consumers;
- b. ensure that goods are labelled by the standards prescribed by the competent authorities;
- c. ensure that goods or material, the production or use that may be harmful to the environment are labelled and supplied by the required rules;
- d. prevent the inclusion of unconscionable terms in contracts;
- e. ensure that measures are in place to punish defaulters;
- f. ensure that institutional arrangements are in place to address defaulters and among others.<sup>202</sup>

Also, the following guiding principles were developed to complement the objectives:

- a. consumer interest as to price, quality and access to goods and services across all sectors;
- b. social and economic equality;
- c. environmental and health protection;
- d. adherence to international standards, codes and conduct.<sup>203</sup>

In 2020, the Consumer Protection Act was passed into law to complement the policy with the overarching goal of protecting and promoting the interest of consumers and the establishment of the National Consumer Protection Commission and other related matters.<sup>204</sup>

## 2.8 Conclusion

Conclusively, despite the piecemeal legislation dealing with competition issues in specific sectors, there are no harmonised rules on competition in Sierra Leone. There is also no independent enforcement institutional framework that deals with competition issues in the country, despite several advocacies from professionals, academics, businessmen to have all-encompassing competition legislation. Given the historical background of competition law, the importance of competition law and enforcement institutional framework cannot be overemphasised, especially so with trade liberalisation, deregulation and development of the private sector and the advent of the African continental free trade agreement (AfCFTA).

---

<sup>202</sup> The Sierra Leone Competition and Consumer Protection Policy (2012) 11.

<sup>203</sup> The Sierra Leone Competition and Consumer Protection Policy (2012) 11- 12.

<sup>204</sup> The Sierra Leone Consumer Protection Act, No. 7 of 2020.



## CHAPTER THREE

### THE PROPOSED LEGAL FRAMEWORK ON COMPETITION LAW IN SIERRA LEONE

‘I assume that we all want a robust, efficient, dynamic market, with players that are inventive. Such market prospects are good for the poor and outsiders. Indeed, competition on the merits often benefits the outsiders more than the insiders; there is no track, and a good competition law leans against power’.<sup>205</sup>

#### 3.1 INTRODUCTION

Diversifying the economy, liberalising trade and promoting the private sector<sup>206</sup> invariably does usher in new participants in the markets. Naturally, this creates a situation wherein the market conditions will be determined by the participants otherwise referred to by economists and competition law scholars as a free market economy. When this happens, there must be a robust law that is all-embracing to regulate the activities of these players in the market, otherwise, the market environment would revert to what Dimgba referred to, as creating new dangers.<sup>207</sup>

As indicated previously, Sierra Leone does not have all-embracing substantive rules on competition law, let alone a good one tailored along with an advanced competition law system.<sup>208</sup> Thus, it has been alluded that a good competition law accelerates economic growth, hence it ensures the efficient allocation of scarce economic resources through the protection of free-market competition.<sup>209</sup> There is evidence suggesting that effective competition law is a catalyst to stimulate the attainment of the United Nation’s (UN) Millennium development goals.<sup>210</sup> Therefore, even though Sierra Leone has a draft competition Bill, the said Bill is grossly inadequate regarding

---

<sup>205</sup> Fox EM ‘Roundtable on: The impact of Cartels on the poor – Intergovernmental Group of Experts on Competition Law and Policy (2013) *New York University* 14.

<sup>206</sup> Sierra Leone has made commitments to diversify the economy, the liberalise trade and promote the private sector in the Sierra Leone’s National Medium-Term Development Plan 2019 – 2023. Similarly, President Julius Maada Bio made this commitment in his Speech on the Opening of the fifth Parliament of the Second Republic of Sierra Leone available at <http://sierraleone.org/speeches/Bio-051018.pd> (accessed on 6 June 2020).

<sup>207</sup> Dimgba N ‘Introduction to Competition law: a sin qua non to a Liberalised Economy’ (2006) available at <http://academia.edu/88/22080/The-Need-and-the-Challenges-to-the-Establishment-of-a-Competition-Law-Regime-in-Nigeria> (accessed 9 September 2020).

<sup>208</sup> See 1.2 & 2.6 of this study.

<sup>209</sup> International Competition Network – Advocacy Working Group Benefits Project: ‘Explaining the benefits of competition to Business’ (2015) 14; available at <https://centrocedec.wordpress.com/2015/07/Explaining-benefits-to-businesses-repor.pdf> (accessed 3 November 2020).

<sup>210</sup> Sonnenbergs EN ‘Competition law in the developing world: A fish out of water?’ (2011) *Fifth Annual Competition Law, Economics and Policy Conference* 27; available at <http://compcom.co.za/wp-content/uploads/2014/09/FINAL-PAPER-2011.pdf> (accessed 2 November 2020).

provisions that will holistically address anti-competitive practices and thereby attract new players in the Sierra Leone market.

In this regard, this chapter makes an analysis of the competition law provisions in the draft competition Bill of Sierra Leone 2018. Further, to buttress why Sierra Leone urgently needs an effective competition law, this chapter addresses competition law and Covid-19, investigates Sierra Leone's regional competition law commitment, competition law and international trade and conclusion.

### **3.2 An analysis of the competition law provisions in the draft competition Bill of Sierra Leone 2018**

As indicated in chapter one of this study, Sierra Leone's draft competition Bill is yet to be accessible on the internet.<sup>211</sup> A copy of the same had to be sourced from a State Counsel at the Ministry of Justice. Whilst the draft competition Bill is a commendable attempt towards having an all-embracing competition law statute in the country, the Bill in its current state, needs improvement to address anti-competitive practices in the country.

Sierra Leone's draft competition Bill, *inter alia* (among other things), makes provision for a competition Bureau whose key functions are to investigate and assess restrictive agreements, abuse of dominant positions and mergers, review trading practices in Sierra Leone, investigate unfair contractual terms, act as a key advocate of competition in Sierra Leone.<sup>212</sup> The Bill further makes provision for conspiracy, bid-rigging, prohibition of vertical agreements, immunity and leniency, the threshold for determining dominant position, abuse of dominant position, mergers, exemptions, market inquiry, and enforcement of competition law at the request of another State and others.<sup>213</sup>

It is important to note that a competition law statute that reflects an advanced competition law system is a major step towards addressing anti-competitive practices. However, the 2018 Sierra Leone's draft competition Bill lacks key provisions befitting of a robust competition law statute. First, unlike an advanced competition law regime like South Africa whose competition law statute

---

<sup>211</sup> See 1.2; since the first draft in 2018, no progress has been made on the Bill. The Bill is still stocked in the shelves of the Law Officers' Department in the Ministry of Justice of Justice and has not been available to the public.

<sup>212</sup> Section 16 of the draft Bill.

<sup>213</sup> Sections 24 – 58 of the draft Bill.

makes provision for the independence of the Competition Commission,<sup>214</sup> Sierra Leone's draft Competition Bill does not make provision for the independence of the Competition Bureau. There is evidence suggesting that the independence of regulators is an important component of regulatory governance in a liberalised and globalized world economy.<sup>215</sup> A competition authority that is not independent stands the risk of having a pressure of serving special interests at the expense of public welfare<sup>216</sup> and could be unable to act partially and unhindered by political interest.<sup>217</sup>

Section 3 of the draft competition Bill of Sierra Leone established the Competition Bureau. The Bureau is designed to have both investigative and administrative, and prosecutorial functions and to be supervised by a non-executive Board appointed by the President on the recommendation of the Minister of Trade.<sup>218</sup> The key functions of the Board are to supervise the Bureau, provide policy guidance, advice and ensure the efficient implementation of the functions of the Bureau.<sup>219</sup> The composition of the Board is made up of persons employed in the government ministries, department and agencies and include a representative of the Ministry of Trade, Ministry of Justice, Ministry of Finance and Economic Development, Office of the Administrator and Registrar General, Sierra Leone Chambers of Commerce, Industry and Agriculture.<sup>220</sup>

The effect of the proposed membership of the Board in the draft Bill is that it does not create the atmosphere for independence and efficiency in carrying out its mandate. This is the case because the membership is made up of employees of government and the possibility of conflict of interest with the proposed membership cannot be easily overruled. Secondly, the efficiency of the Board in carrying out investigative, prosecutorial and administrative functions may not be assured. Moreover, there is no division created in the high court to deal with appeals from the Bureau, but rather the commercial division of the high court,<sup>221</sup> which, could not have a judge with expertise or experience in competition law issues.

---

<sup>214</sup> Section 20 of the South African Competition Act 1998.

<sup>215</sup> UNCTAD 'Independence and accountability of competition authorities (2008) 3.

<sup>216</sup> Kovacic WE 'Competition agencies, independence and political process' in Drexler J, Kerber W, & Podszun R eds *Competition Policy and the Economic Approach* (2011) 291.

<sup>217</sup> Alves S *et al* 'Principles for the Independence of Competition Authorities' (2015) 11.

<sup>218</sup> Sections 4, 6, 17 & 35 of the draft Bill.

<sup>219</sup> Section 6 of the draft Bill.

<sup>220</sup> Section 4 of the draft Bill.

<sup>221</sup> Section 35 of the draft Bill.

Similarly, South Africa encountered comparable problems with the enactment of the Maintenance and Promotion of Competition Act of 1978 which brought about the creation of a Competition Board charged with administrative and investigations functions on competition issues.<sup>222</sup> However, the Competition Board established by the said Act had several weaknesses such as its recommendations were not binding, secondly, some of its investigations were informally conducted, (for example, merger clearance were granted privately) and the Board had a difficulty of being impartial due to the composition of its membership.<sup>223</sup>

Conversely, with the enactment of the South African Competition Act of 1998, the situation is now different. The present South African competition law regime has a hierarchy of three specialist institutions that apply and enforce the substantive rules of the competition law of South Africa.<sup>224</sup> In this regard, these institutions are the Competition Commission tasked with the responsibilities of investigating and prosecuting anti-competitive practices; the Competition Tribunal, the court of first instance in competition law violation and performs administrative functions, and the Competition Appeals Court, a special division in the high court that deals with appeals from the Competition Tribunal.<sup>225</sup>

Moreover, unlike the South African Competition Act and the Federal Competition and Consumer Protection Act of Nigeria which set out the goals of the Acts in section 2, Sierra Leone's draft competition Bill does not make such provision. The importance of goal provisions is that they set out the intention of parliament and the business practices that are prohibited in the market. Therefore, when it comes to implementation and interpretation, it makes the work of the competition authorities and ordinary courts much easier. Although the Competition Appeal Court in the *Walmart case*, one of the opposing parties contended that the Act merely concerns the promotion of consumer welfare and that the competition law of South Africa should be used as a tool for economic development and other tools like industrial policy.<sup>226</sup> The Competition Appeal

---

<sup>222</sup> Ndlovu PN (Unpublished LLD thesis, University of the Western Cape, 2017) 5.

<sup>223</sup> Ndlovu PN (Unpublished LLD thesis, University of the Western Cape, 2017) 5-6.

<sup>224</sup> Sutherland P & Kemp K *Competition Law of South Africa* (2000)11.1.

<sup>225</sup> Bleazard, J. 'Pigeon-holed by precedent: form versus substance in the application of South African Competition Law Regimes' in Lewis D (ed) *Building New Competition Regimes*(2013) 83-100.

<sup>226</sup> *Minister of Economic Development & others v Competition Tribunal & others* 2012 (2)ZACA .

Court, however, holds that the Act when viewed holistically and because of the wording of section 2, allows an economic perspective that extends beyond consumer welfare.<sup>227</sup>

Caution must however be taken, that the objectives may not always be used to interpret the provisions of a Competition Act. In *Industrial Development Corporation of South Africa v Anglo-American Holdings*, the Competition Tribunal cautioned, that the provisions on mergers in the Act, the preamble and objectives cannot be used to pursue consideration not expressly or by implication located in the provisions dealing with mergers in the Act.<sup>228</sup>

Further, unlike the 2018 draft competition Bill of Sierra Leone, jurisdictions like South Africa<sup>229</sup>, Nigeria and the United Kingdom make provisions for exemption or exceptions for professional association rules.<sup>230</sup> Neuhoff *et al* describe exemption in the South African context to mean, to be excused or freed from an obligation under the Competition Act.<sup>231</sup> Schedule 1 of the Competition Act of South Africa 1998 makes provision for professional associations. Professional associations with rules containing restrictions may apply to the Competition Commission to have all or part of their rules exempted from Part A of Chapter 2 of the South African Competition Act.<sup>232</sup> The exemption could be granted if found not anti-competitive, and if anti-competitive, it can be justified that the exemptions are reasonably required to maintain professional standards or the ordinary functions of the profession.<sup>233</sup> Therefore, it is submitted that an exemption of professional

---

<sup>227</sup> *Minister of Economic Development & others v Competition Tribunal & others* 2012 (2)ZACAC.

<sup>228</sup> *Industrial Development Corporation of South Africa Ltd v Anglo-American Holdings Ltd* 45/LM/JUN02 and 46/LM/June02 (2002) para 31-34.

<sup>230</sup> Schedule 1 of the South African Competition Act, 89 of 1998 makes provision for the exemption of professional associations, and the associations exempted are listed in the first schedule of the Act. Secondly, section 68 (1) (c) of the Federal Competition and Consumer Protection Act of Nigeria 2019 makes provision for professional exceptions from the Act, and the first schedule of the Act list the professional associations that are exempted from the Act. Thirdly, the fourth schedule of the competition Act of the United Kingdom chapter 41 of 1998 makes provision for the exemption of professional rules and the professional associations that are exempted are also listed in the said schedule of the Act. Exemptions and exceptions carry the same meaning on the point made. It means to be excused from something.

<sup>231</sup> Neuhoff M, *et al A Practical Guide to the South African Competition Act* (ed) (2006) 157.

<sup>232</sup> Section 10. See the Competition Commission of South Africa 'Exemptions' available at <https://compcom.co.za/exemptions/> (accessed 26 November 2020).

<sup>233</sup> Section 10. See also the Competition Commission of South Africa 'Exemptions' available at <https://compcom.co.za/exemptions/> (accessed 26 November 2020). For example, in the *Commissioner of the Competition Commission v The General Council of the Bar of South Africa* (2002) 4 All SA 145 (SCA), the General Council of the Bar of South Africa (GCB) filed an exemption with the competition Commission in terms of Schedule 1 of the Competition Act so as to have its rules and its constituent members exempted. After reviewing the rules, the Competition Commission held that the exemption was not justifiable. The Competition Commission however indicated that it will exempt the rules provided certain were amended or cancelled. The GCB took the matter to the

rules in a competition statute is key, hence it also ensures that those professional rules are not used in an anti-competitive manner.

In addition, though section 30 of Sierra Leone's 2018 draft competition Bill makes provision for Vertical agreement<sup>234</sup>, the Bill does not make clear provision for restrictive horizontal agreement. Unlike the South African competition Act of 1998, both restrictive vertical and horizontal agreements are clearly provided.<sup>235</sup> For ease of reference, section 30 of the draft Bill provides:

- (1) Every person who, by agreement, threat, promise or any like means, has influenced or has discouraged the reduction of the price at which the person's customer or any other person to whom the products come for resale supplies or offer to supply in Sierra Leone, or
- (2) Has refused to supply a product to or has otherwise discriminated against any person or class of persons engaged in business in Sierra Leone because of low pricing policy of that other person or class of person is guilty of an offence...<sup>236</sup>

There is a difference between horizontal relationships and vertical relationships. Whilst horizontal relationship deals with the relationship between competitors, vertical relationship deals with the relationship between a firm and its suppliers, its customers or both.<sup>237</sup> Therefore, the importance of having both provisions clearly provided for in a competition law statute is that it tends to cover a larger latitude of anti-competitive practices, and does not create room for unnecessary technicalities because of ambiguity or what could be seen as a *lacuna*. However, a competition law statute can prohibit both horizontal and vertical restraints in a particular provision without expressly distinguishing between the two.<sup>238</sup> Nevertheless, the South African approach is more preferable for newcomers to this law because of the advantage of clarity.

In short, the Ministry of Justice through the Law Officers' Department of Sierra Leone should carefully review the draft Competition Bill to capture all the relevant provisions that were left out. The draft should be well equipped to stand the test of time when passed into law.

---

High Court and subsequently the Supreme Court of appeal. See also Neuhoff M, et al. *A Practical Guide to the South African Competition Act* (ed) (2006) 163.

<sup>234</sup> Section 30 of the Draft Competition Bill of Sierra Leone 2018.

<sup>235</sup> Sections 4 & 5 of the South African Competition Act 89 of 1998.

<sup>236</sup> Section 30 of the draft Competition Bill

<sup>237</sup> Section 1 of the South African Competition Act 89 of 1998.

<sup>238</sup> Article 101 of the Treaty on European Union 1992 follows the above approach.

### 3.3 Competition law and covid-19

The outbreak of the novel Covid-19 clearly shows the need why competition law legislation should cover pandemics. In South Africa for example, the wake of the outbreak of Covid-19 saw the hike in prices of certain essential healthcare and food items and the strides taken by the Competition Commission to address the problem.<sup>239</sup> Invariably, once market players are not restricted against acts that are at variance with the ethos of decent commercial practices, they seize the opportunity to make a profit at the expense of the consumers.

Notwithstanding the provisions of the South African Competition Act, section 10 makes provision on exemptions with regards prohibited practices such as restrictive horizontal agreements or practices, restrictive vertical agreements or practices, abuse of dominance and price discrimination.<sup>240</sup> The first category of exemption is referred to as the ‘public interest’ exemptions and are granted by the Competition Commission according to section 10 of the Act.<sup>241</sup> The second category of exemption has to do with intellectual property rights also provided for in section 10.<sup>242</sup> The third category of exemption is provided for in schedule 1 of the Act and deals with professional rules.<sup>243</sup> However, though the Act does not make any specific provision on exemptions to deal with situations during pandemics. Section 10 read with section 78 provide for the fourth category of exemptions which are block exemptions granted during the Covid-19 pandemic.<sup>244</sup>

In this regard, as a means of swiftly responding to issues bothering on anti-competitive conducts which arose as a result of the novel Covid-19 outbreak, the government of South Africa through the Minister of Trade and Industry after consultation with the Competition Commission issued regulations in March 2020 to fight the Covid-19.<sup>245</sup> These regulations are said to be effective until

---

<sup>239</sup> The lockdown saw a spike in food prices across South Africa-and some groceries are still more expensive than before available at <https://businesstech.co.za/news/finance/435933/the-lockdown-saw-a-hike-in-food-prices-across-south-africa-and-some-groceries> (accessed 14 August 2021).

<sup>240</sup> Section 10 (1) of the South African Competition Act 89 of 1998 (as amended).

<sup>241</sup> Sutherland P & Kemp K *Competition Law of South Africa* (2014) 11.3.4.

<sup>242</sup> Section 10(4).

<sup>243</sup> Schedule 1 of the Competition Act.

<sup>244</sup> Sections 10(10) & 78 of the Act.

<sup>245</sup> Global Compliance News ‘South Africa: Competition Law Exemptions and Regulations applicable during Covid-19’ available <https://www.globalcompliancenews.com/south-africa-competition-law-covid19-240332020/> (Accessed 15 September 2020).

the national disaster is rescinded.<sup>246</sup> These regulations include the COVID-19 Block Exemption for the Healthcare Sector 2020 which purpose is to exempt categories of agreements or practices in the healthcare sector from the application of sections 4 and 5 of the Competition Act of South Africa 1998 as a response to the Covid-19 pandemic as a national disaster.<sup>247</sup> Secondly, the Consumer and Customer Protection and National Disaster Management Regulations and Directions 2020 which purpose is to prevent the escalation of disaster and to protect consumers and customers from unconscionable, unfair, unreasonable or improper commercial practices during the national disaster.<sup>248</sup> The third regulation is the COVID-19 Block Exemption for the Rental Property Sector, 2020 which is to exempt from agreements or practices between retail tenants and property landlords from the application of sections 4 and 5 of the South African Competition Act in response to the Covid-19 pandemic<sup>249</sup>. The retail property sector block exemption was granted to only retailers providing essential goods and services.<sup>250</sup> The banking block exemption was granted to enable both business and private individuals to continue their banking activities during the pandemic and the hotel sector block exemption was granted to cover agreements regarding facilities identified for quarantine purposes and cost reduction measures.<sup>251</sup>

The above regulations were primarily put in place to manage the economic and social effects of the pandemic by ensuring that measures are put in place to prevent the escalation of the pandemic and to minimize the economic and social effects of the pandemic.<sup>252</sup>

In light of the above, although the South African government invoked sections 10 and 78 of its Competition Act (on public interest grounds) to put in place regulations to address issues bothering around competition law due to the Covid-19 pandemic, these regulations will be rescinded at the

---

<sup>246</sup> Global Compliance News ‘South Africa: Competition Law Exemptions and Regulations applicable during Covid-19’ available <https://www.globalcompliancencnews.com/south-africa-competition-law-covid19-240332020/> (accessed 15 September 2020).

<sup>247</sup> COVID-19 Block Exemption for the Healthcare Sector 2020, Regulation Gazette No. 11056 Vol.657 (dated 19 March, 2020) No 43114.

<sup>248</sup> Consumer and Customer Protection and National Disaster Management Regulations and Directions, 2020, Regulation Gazette No.11057 Vol. 657 (date 19 March 2020) No.43116.

<sup>249</sup> COVID-19 Block Exemption for the Rental Property Sector, 2020 (No. 43134).

<sup>250</sup> Ndlovu, P.N ‘National disasters and Competition Law: COVID-19 block exemptions under South African Competition Law’ (2021) *European Journal of Economics, Law and Social Sciences* 5 (2) 548.

<sup>251</sup> Regulation 2.2 of the Covid-19 Block Exemption for the Banking Sector, Government Notice No. 355, Government Gazette No. 43127,23 March 2020; Regulation 3.1-Regulation 3.2 of the Covid-19 Block Exemption for the Hotel Industry, Government Notice No.422, Government Gazette No. 43175, 27 March 2020.

<sup>252</sup> Ndlovu, P.N ‘National disasters and Competition Law: COVID-19 block exemptions under South African Competition Law’ (2021) *European Journal of Economics, Law and Social Sciences* 5 (2) 546.



end of the pandemic. Therefore, it is safe that issues bothering on pandemics are legislated to cover the competition laws of South Africa. The same should be done for Sierra Leone since the 2018 draft competition Bill of Sierra Leone is silent on pandemics.

Finally, the Ministry of Trade Industry and Competition adopted the Consumer and Customer Protection Regulations and National Disaster Management Regulations (the Consumer Protection Guidelines) to prohibit the excessive pricing of ‘essential goods’ during the pandemic, in line with section 8(1) (a) of the Competition Amendment Act of 2018.<sup>253</sup> Annexure B of the Regulations contains a list of products and services that were prohibited to charge excessive prices and include products like toilet paper, hand sanitiser, facial masks, surgical gloves, disinfectants and others, whilst services include private medical services relating to testing, prevention, and treatment of Covid-19 and its associated diseases. The Competition Tribunal then published the Tribunal Rules for Covid-19 Excessive Pricing Complaint Referrals on 03 April 2020 and the issued the Tribunal Directive for Covid-19 Excessive Pricing Complaint Referrals (the Directive) on 06 April 2020.

However, certain businesses in South Africa engaged in the said prohibited practice of excessive pricing, thereby violating the Competition Act and the Consumer Protection Regulations. In *Competition Commission v Babelegi Workerwear and Industrial Supplies CC* where the Competition Commission alleged that Babelegi had contravened the Consumer Protection Regulations by engaging in excessive pricing of face mask (products which were essential as the country made efforts to deal with the pandemic).<sup>254</sup> The Competition Tribunal found Babelegie guilty of excessive pricing during the pandemic contrary to section 8(1)(a) and (3) of the Competition (Amendment Act) of 2018. The Tribunal’s decision was subsequently upheld by the Competition Appeal Court.<sup>255</sup>

Similarly, in *Competition Commission v Dis-Chem Pharmacies Limited*<sup>256</sup>, the Competition Tribunal found Dis-Chem Pharmacies Limited, a leading retail pharmacy group in South Africa, guilty of charging excessive prices for surgical face mask during Covid-19 pandemic. In the Dis-Chem Pharmacies case, the Competition Commission alleged that Dis-Chem contravened section

---

<sup>253</sup> Government Gazette No 43116, 19 March 2020.

<sup>254</sup> *Competition Commission and Babelegi Workwear Overall Manufacturers and Industrial Supplies CC* (CR003Apr20).

<sup>255</sup> 186/CAC/JUN20.

<sup>256</sup> *Competition Commission and Dis-Chem Pharmacies Ltd* (CR008Apr20).

8(1)(a) of the Competition Amendment Act of 2018, read with section 4 of the Consumer Protection Regulations. The Competition Tribunal found Dis-Chem to have failed to show that its price increases for specific surgical face masks (SFM50, SFM5 and Folio50) were reasonable in the circumstances of the Covid-19 pandemic.

Further, the Competition Commission concluded settlement agreements with some of the firms who had engaged in excessive pricing during the pandemic. These agreements were approved by the Competition Tribunal as consent orders for products including face masks,<sup>257</sup> surgical gloves,<sup>258</sup> sanitizer products,<sup>259</sup> and unique products.<sup>260</sup>

### 3.4 Sierra Leone's commitment to regional competition law

The GoSL in its competition policy has committed itself to take steps to ensure that it complies with its obligation under the ECOWAS Regional Competition Framework and the ECOWAS Community Competition Rules as contained in the Supplementary Act.<sup>261</sup> The overarching goal of this commitment is to harmonise, coordinate national policies, promote integration programs, projects and activities in food, agriculture, natural resources, industry, transport and communications, energy, trade, money and finance, taxation, economic reform policies, human resources, education, information, culture, science, technology, services, health, tourism and legal matters.<sup>262</sup> Further, the policy notes that the competition authority (referred to as the Competition

---

<sup>257</sup> *Competition Commission and Mandini Pharmacy (Pty) Ltd* (CO013Apr20). Mandini Pharmacy was ordered to reduce its net margin on face mask. Also *Competition Commission and Sunset Pharmacy CC* (CO016May20) where Sunset Pharmacy agreed to reduce its gross profit margin in respect of face mask for the duration of the national disaster. See also *Competition Commission and Retrospective Trading 199/a Merlot Pharmacy* (CO018May20).

<sup>258</sup> See *Competition Commission and Main Hardware (Pty) Ltd* (CO007Apr20), where Main Hardware was directed to reduce its net mark-up on surgical gloves for the duration of the pandemic.

<sup>259</sup> See *Competition Commission and Evergreen Fresh Market (Pty) Ltd* (CO009Apr20), where Evergreen Fresh Market was found to have charged excessive prices on sanitisers to a mark-up of 50.1%. The Competition Commission recommended a margin of 25% or lower and Evergreen Fresh Market agreed to donate R1 800.00 worth of hand sanitizers. See also *Competition Commission and Cedar Pharmaceuticals CC t/a Bel-Kem Pharmacy* (CO015May20), where Cedar Pharmaceuticals had charged excessive pricing on 750 ml Dettol antiseptic disinfectant liquid and agreed to reduce its profit margin.

<sup>260</sup> See *Competition Commission and Crest Chemicals (Pty) Ltd* (CCO176Dec20), where Crest Chemicals was accused of excessive pricing on Purity isopropanol and N-propanol and thereafter agreed to pay an administrative penalty of R98 536,92 and contribute R60 000.00 worth of sanitizers to charity.

<sup>261</sup> The Government of Sierra Leone Competition and Consumer Protection Policy (2012) 17. See also ECOWAS Competition Supplementary Act A/SA.1/12/08. The Supplementary Act Adopting Community Competition Rules and the Modalities of their application within ECOWAS.

<sup>262</sup> The Government of Sierra Leone Competition and Consumer Protection Policy (2012) 17.

Bureau in the draft Bill) has the responsibility to develop rules that conform to Sierra Leone's obligation under the ECOWAS Community Competition Rules.<sup>263</sup> It is also committed that the proposed Competition Bureau will cooperate with the ECOWAS Regional Competition Authority to share information and to promote competition with the ECOWAS sub-region.<sup>264</sup>

Article 13(6) of the ECOWAS Competition rules provides that for the application of the rules, Member States are obligated to adopt all measures they deem appropriate, and on condition that the measures adopted are not inconsistent with the provisions of the Supplementary Act.<sup>265</sup> The scope of the application of the Supplementary Act covers acts that directly affect regional trade, investment flows and conducts that may not be eliminated except with the framework of regional cooperation.<sup>266</sup> The rules cover agreements, practices, mergers and distortions caused by Member States with the likelihood of affecting trade within ECOWAS.<sup>267</sup>

Commendably, Sierra Leone's draft competition Bill tends to comply with regional cooperation to address anti-competitive conducts; a commitment made under the ECOWAS Community Competition Rules. Section 58 (1) - (2) of the draft competition Bill provide thus:

'Subject to subsection (2) the Bureau may investigate any matter falling within the scope of this Act and make an appropriate determination of the case when a competition authority duly constituted in another States so requests and when that authority provides information sufficient to demonstrate reasonable grounds for belief that anti-competitive practice in Sierra Leone is damaging competition in the country.

(2) Subsection (1) shall apply when the Minister has certified by order, duly published in the official journal, that Sierra Leone has entered into an agreement with one or more other states whereby, on a basis of reciprocity, each party to the agreement will exercise the principle of comity on the basis described in subsection (1) in investigating and determining cases falling within its jurisdiction at the other state party or parties'<sup>268</sup>

Section 58(1)-(2) of the draft Bill seems complementary to Article 5 of the ECOWAS Competition rules and provides that the Authority to obtain evidence against a person or body corporate

---

<sup>263</sup> The Government of Sierra Leone Competition and Consumer Protection Policy (2012) 17.

<sup>264</sup> The Government of Sierra Leone Competition and Consumer Protection Policy (2012) 17.

<sup>265</sup> Article 13(6) of the Supplementary Act A/SA.1/12/08 Adopting Community Competition Rules and the Modalities of their application within ECOWAS.

<sup>266</sup> Article 4 of the Supplementary Act A/SA.1/12/08.

<sup>267</sup> Article 4 of the Supplementary Act A/SA.1/12/08.

<sup>268</sup> Section 58(1) of the Draft Sierra Leone Competition Bill 2018.

involved in anti-competitive conduct, or conduct likely to be anti-competitive, may request the authority from the competent national institutions to carry out investigations.<sup>269</sup>

Section 58 (4)-(5) corroborates subsection 1 and 2 of the draft Bill by providing that where a foreign Competition authority has a reasonable belief that anti-competitive practices in Sierra Leone has effect in that country which is a member state of the ECOWAS, request the Competition Bureau to investigate and make an appropriate determination. It is therefore obvious that Sierra Leone is determined to comply with its commitment under the ECOWAS Competition Framework by reflecting the said commitment in its competition policy and its proposed law. However, reflecting such a commitment in a country's domestic competition law cannot be an end in itself, compliance and enforcement of the law are crucial, hence regional competition agreement has both its benefits and challenges.

It has been accounted that regional competition agreements have held great potential to overcome major enforcement problems in developing jurisdictions.<sup>270</sup> This advantage has brought about the upsurge of several regional competition agreements such as Mercado Común del Sur (MERCOSUR), the Caribbean Community and Common Market (CARICOM), Common Market for Eastern and Southern Africa (COMESA), West African Economic and Monetary Union (WAEMU), Economic Community of West African States (ECOWAS), Southern and Eastern African Competition Forum (SEACF), Economic and Monetary Community of Central Africa (CEMAC), South African Development Community (SADC), Southern African Customs Union (SACU), the East African Community (EAC), and Association of South-East Asian Nations (ASEAN).<sup>271</sup> However, most of the said agreements are not specific to competition law but does involve other issues especially trade.<sup>272</sup>

---

<sup>269</sup> Article 5 of the Supplementary Act A/SA.2/12/08 on the establishment, functions and adoption of the regional Competition Authority for ECOWAS.

<sup>270</sup> Gal MS & Wassmer IF 'Regional agreements of developing jurisdictions: Unleashing the potential in *Competition Policy and Regional Integration in Developing Countries*', (2012) Bakhroum M, Drexl J, Gal M, Gerber D, Fox E (eds) available at <http://ssrn.com/abstract=1920290> (accessed 15 April 2021).

<sup>271</sup> Gal MS & Wassmer IF 'Regional agreements of developing jurisdictions: Unleashing the potential in *Competition Policy and Regional Integration in Developing Countries*', (2012) Bakhroum M, Drexl J, Gal M, Gerber D, Fox E (eds) available at <http://ssrn.com/abstract=1920290> (accessed 15 April 2021).

<sup>272</sup> Gal MS & Wassmer IF 'Regional agreements of developing jurisdictions: Unleashing the potential in *Competition Policy and Regional Integration in Developing Countries*', (2012) Bakhroum M, Drexl J, Gal M, Gerber D, Fox E (eds) available at <http://ssrn.com/abstract=1920290> (accessed 15 April 2021).

### 3.4.1 Benefits of regional competition regulatory framework

In today's world, anti-competitive practices are not limited to a particular jurisdiction, but exist in most jurisdictions and sometimes a regional challenge. Therefore, regional competition law agreements bring certain prospective benefits. One of the benefits includes joint enforcement, resources and capacity. With collective enforcement by countries and pooling resources and capacity together, developing countries would benefit in tackling cross-border cartels. Joint enforcement further serves as an advantage to small jurisdictions due to the low capacity of these jurisdictions in creating credible threats to prohibit the conduct of multinational companies as a result of power asymmetries.<sup>273</sup>

Another advantage is increased transparency. A regional competition authority may complement competition authorities of Member States and could help address limitations of existing authorities such as corruption, inefficiency and bureaucratic obstacles.<sup>274</sup> Suffice it to say, that a joint authority could help member States to create a binding commitment. Transparency could be achieved if member States are prepared to enforce the law without fear or favour and the independence of the regional authority must be guaranteed.<sup>275</sup> Importantly, the institutions should be sufficiently staffed with qualified personnel, and the personnel should be corrupt-free and an appellate channel must be provided.<sup>276</sup>

Moreover, the regional regulatory framework has the potential to increase legal certainty, compatibility and predictability of decisions.<sup>277</sup> Domestic laws are different and disintegrated and could pose the risk of uncertainty, especially so in terms of notification of mergers which could affect other jurisdictions. Practically, even if countries are notified separately, the possibility of having conflicting decisions and remedies may not be far removed. Conversely, in a situation where a foreign firm would have to file one notice to a regional authority if the merger could

---

<sup>273</sup> Gal MS & Wassmer IF 'Regional agreements of developing jurisdictions: Unleashing the potential in *Competition Policy and Regional Integration in Developing Countries*', (2012) Bakhroum M, Drexl J, Gal M, Gerber D, Fox E (eds) available at <http://ssrn.com/abstract=1920290> (accessed 15 April 2021).

<sup>274</sup> Gal MS & Wassmer IF 'Regional agreements of developing jurisdictions: Unleashing the potential in *Competition Policy and Regional Integration in Developing Countries*', (2012) Bakhroum M, Drexl J, Gal M, Gerber D, Fox E (eds) available at <http://ssrn.com/abstract=1920290> (accessed 15 April 2021).

<sup>275</sup> Chapeyama S *Developing a regional competition regulatory framework in the Southern African Development Community (SADC)* (unpublished LLM thesis, University of the Western Cape, 2014) 58.

<sup>276</sup> Fox EM 'Antitrust, economic development and poverty: The other path' (1991) *Harvard Institute for International Development* available at <http://unctad.org/sections/ditc-ccb/docs/ditc-ccb003.en.pdf> (accessed 18 August 2020).

<sup>277</sup> Chapeyama S (unpublished LLM thesis, University of the Western Cape, 2014) 58.

substantially affect the regional market, it may be less difficult and could serve as a catalyse to incentivize foreign investors to enter and expand in the regional market.<sup>278</sup>

Conclusively, despite the above benefits that regional competition law framework stands to offer, it has been alluded that a regional competition law framework has the potential to offer other benefits such as a broader enforcement jurisdiction, strengthen market integration and competition culture and create a positive formal cooperation system.<sup>279</sup>

### **3.4.2 Potential challenges of regional competition regulatory framework**

Regional integration has not survived without underlying challenges. Even the European Union which is considered as the most successful regional bloc has experienced challenges such as Brexit, lack of solidarity across the Member States on several issues like refugees, to democracy, youth unemployment and others.<sup>280</sup> In this regard, ECOWAS, of which Sierra Leone is a member has its challenges. Therefore, whilst some benefits accords regional competition regulatory framework, the potential challenges also must not be disregarded. The following are some of the challenges of competition law regulatory framework: fear of loss of sovereignty, lack of political will, overlapping of regional integration, lack of respect for the rule of law and different levels of economic development.

First, the fear of loss of political sovereignty presents a challenge to competition law in the context of regional integration. Government wariness to cede sovereignty concerning the compliance of international agreements or the rulings of regional courts and tribunal is a serious challenge to regional integration. A case in point is a matter brought by farmers in Zimbabwe to the SADC Tribunal. The farmers were affected by Zimbabwe's land reform policy. The tribunal ruled against Zimbabwe<sup>281</sup>. However, the decision of the Tribunal was not implemented on the grounds of

---

<sup>278</sup> Chapeyama, S (Unpublished LLM thesis, University of the Western Cape, 2014) 68.

<sup>279</sup> Gal MS & Wassmer IF 'Regional agreements of developing jurisdictions: Unleashing the potential in Competition Policy and Regional Integration in Developing Countries', (2012) Bakhoun M, Drexl J, Gal M, Gerber D, Fox E (eds) available at <http://ssrn.com/abstract=1920290> (accessed 15 April 2021 ) 3 - 6. See also Chapeyama, S (Unpublished LLM thesis, University of the Western Cape, 2014) 59 – 63.

<sup>280</sup> Stiftung, H.B. 'What are the main challenges facing the European Union in 2017?' available at <https://eu.boell.org> (accessed 17 October 2021).

<sup>281</sup> *Campbell & others v Republic of South Africa* SADC (T) No.2/2007. See also Phooko MS *The SADC Tribunal: its jurisdiction, Enforcement of its judgments and the Sovereignty of its member States* (unpublished LLD thesis, University of South Africa 2016) ii.

sovereignty.<sup>282</sup> The same holds true in the matter between *His Excellency Alhaji Samuel Sam-Sumana v The Republic of Sierra Leone*<sup>283</sup> where the Plaintiff, Alhaji Samuel Sam-Sumana was relieved of his duty by the then President of the Republic of Sierra Leone. He took the matter to the supreme court of Sierra Leone and lost in the said court. He thereafter appealed to the ECOWAS Community Court of Justice. The ECOWAS court ruled that the sacking of the former Vice President Alhaji Samuel Sam-Sumana was illegal and his removal violated his fundamental human rights to a fair hearing and to participate in politics as guaranteed by the African Charter on Human and People's Rights.<sup>284</sup> Unfortunately, a press release from the office of the Attorney General then stated:

‘Our office wishes to reiterate its legal position that the ECOWAS court lacks competence and jurisdiction over the aforementioned matter. The Supreme Court of Sierra Leone did rule on the above matter and therefore, no other court is competent to overrule it except itself’.<sup>285</sup>

Therefore, it is a bad practice for States to arbitrarily disobey treaty obligations backed up with the excuse of sovereignty when sovereignty itself has been the most misused concept of international affairs and international law.<sup>286</sup> Hence, it is an act of sovereignty to conclude international agreements, establish trade arrangements with neighbouring countries and do this based on reciprocity.<sup>287</sup>

Secondly, the lack of political will is another challenge in regional competition law. As the rule of law closely relates to the practice of democratic principles<sup>288</sup>, Member States of the ECOWAS Competition Authority must be willing to submit to the regional law on competition. Thus, the overarching goal of the ECOWAS Competition Authority is essentially to promote, maintain and encourage competition and enhance economic efficiency in production, trade and commerce at a

---

<sup>282</sup> Ndlovu, P.N ‘Campbell v Republic of Zimbabwe: A moment of truth for the SADC Tribunal’ (2011) *SADC Law Journal* 75.

<sup>283</sup> *His Excellency Alhaji Samuel Sam-Sumana v The Republic of Sierra Leone* 2017 (19) JUD/CCJ/ECW.

<sup>284</sup> *His Excellency Alhaji Samuel Sam-Sumana v The Republic of Sierra Leone* 2017 (19) JUD/CCJ/ECW

<sup>285</sup> Milton B. ‘Sierra Leone News: ECOWAS court rules-former VP sacking was illegal’ Awoko publications 5 December 2017 available at <https://awokonewspaper.sl/sierra-leone-news-ecowas-court-rules-former-vp-sacking-was-illegal/> (accessed 30 June 2021).

<sup>286</sup> The Future of the WTO : Addressing institutional challenges in the new millennium (WTO 2004 Sutherland Report) 29.

<sup>287</sup> Erasmus G. ‘Is the SADC trade regime a rules-based system?’(2011) Vol.1 *SADC Law Journal* 21.

<sup>288</sup> Common Wealth of Nations *Rule of Law* available at <http://www.commonwealthofnations.org/commonwealth-in-action/rule-of-law-2/> (accessed 5 July 2021).

regional level.<sup>289</sup> Its mandate is to promote competition in West Africa by regulating restrictive business practices, cartels, mergers and acquisitions that undermine consumer welfare, market efficiency and economic growth in West Africa.<sup>290</sup> Therefore, the goals of the authority would be far-fetched if member States of ECOWAS fail to uphold and implement the principles and decisions of the ECOWAS Competition Authority.

The same holds true for the ECOWAS Court of Justice which faces challenges of securing compliance with its judgments.<sup>291</sup> ECOWAS already has experienced the reluctance of Member States with regards to the implementation of decisions of a regional authority. It is expected that they have to require a lot more lobbying by providing preferential treatments with opportunities available to the region as a way of encouraging commitments among members States.

Thirdly, the challenge of overlapping economic blocs plagues regional efforts in Africa. In the context of globalization, regional integration is a major roadmap for Africa to achieve enhanced competitiveness in global trading, prevention of conflicts and consolidation of economic and political reforms.<sup>292</sup> However, regional integration is a complex and confusing affair in Africa; what Draper *et al* characterise as:

‘a spaghetti bowl that hinders regional integration by creating a complex entanglement of political commitments and institutional requirement’.<sup>293</sup>

Since Africa is diverse and one size may not fit all, regional integration has led to multiple and overlapping memberships of Regional Economic Communities (RECs). With at least 14 currently existing RECs in Africa, most countries belong to at least two of them. West Africa alone has six RECs with each country belonging to at least two.<sup>294</sup> The RECs in West Africa includes:

---

<sup>289</sup> ECOWAS Launches Regional Competition Authority available at <https://www.ecowas.int/ecowas-launches-regional-competition-authority/> (accessed 5 July 2021).

<sup>290</sup> Welcome to the ECOWAS Regional Competition Authority available at <https://www.arcc-erca.org> (accessed 5 July 2021).

<sup>291</sup> Alter K.J *et al* ‘A New International Human Rights Court for West Africa: the ECOWAS Community Court of Justice (2013) vol.107; 737, *The American Journal of International Law* 739.

<sup>292</sup> Ndomo A, ‘Regional Economic Communities in Africa: A progress review’ available at <https://www.tralac.org/images/news/Reports/Regional/Regional-Economic-Communities-in-Africa-A-Progress-Overview-Atieno-Ndomo> (accessed 13 July 2021). 5.

<sup>293</sup> Draper P *et al* ‘SACU, Regional Integration and the Overlap Issue in Southern Africa: from Spaghetti to Cannelloni?’ - Trade Policy Report No.5 (2017) *Acumen Publishing Solutions, Johannesburg* 7.

<sup>294</sup> Ndomo A, ‘Regional Economic Communities in Africa: A progress review’ available at <https://www.tralac.org/images/news/Reports/Regional/Regional-Economic-Communities-in-Africa-A-Progress-Overview-Atieno-Ndomo> (accessed 13 July 2021). 10; the eight recognised RECs by Au are: Arab Maghreb Union (UMA), East African Community (EAC), Economic Community of West African States (ECOWAS), Southern Africa



ECOWAS, the West Africa Economic and Monetary Union (MAEMU), West African Monetary Zone (WAMZ), Conseil de l'Entente (CE), Mano River Union (MRU) and Comité permanent Inter-Etats de Lutte contre la Sécheresse dans le Sahel (CILSS).<sup>295</sup>

The advent of the AfCFTA Agreement which was adopted in 2018, does not seem to solve this issue of overlapping membership but rather welcomes it. Article 19 (2) of the said Agreement provides that State Parties that are members of other RECs that have attained higher levels of regional integration than under the AfCFTA Agreement should maintain the status quo.<sup>296</sup> The disadvantages of multiple and overlapping memberships cannot be overemphasised, hence it leads to confusion, inconsistencies, duplication and incoherence in policies. It further creates a complicated web of competing commitments, involves resource and effort wastage due to duplication of effort and complicates harmonisation and coordination.<sup>297</sup>

In this regard, Africa Union needs to go back to the drawing board to see how the problems surrounding the overlapping membership of RECs can be tackled. In as much as ECOWAS has its problem of overlapping RECs, SADC, COMESA and other parts of Africa have similar issues. Sierra Leone being a member of AU, AfCFTA, ECOWAS, MRU and WAMZ should not overlook the potential of overlapping RECs to affect the smooth functioning of a newly formed regional authority like the ECOWAS Competition Authority. Therefore, the Member States of the said authority should ensure that the ECOWAS Competition rules are not in conflict with other RECs of which they are members.

---

Development Community (SADC), Community of Sahel-Saharan States (CENSAD), Inter-Governmental Authority on Development (IGAD), Common Market for Eastern and Southern Africa (COMESA) and Economic Community of Central African States (ECCAS). The remaining six integration blocs include: Economic Community of Great Lakes Countries (CEPGL), Southern African Customs Union (SACU), Manoro River Union (MRU), West African Economic and Monetary Union (UEMOA), Central African Economic and Monetary Community (CEMAC) and Indian Ocean Commission (IOC).

<sup>295</sup> Afesorgbor SK. & van Bergeik PAG. 'Multi -Membership and the Effectiveness of Regional Trade Agreements in Western and Southern Africa: A Comparative Study of ECOWAS and SADC (2011) *Institute of Social Science Working Paper* No.520, 10 available at SSRN: <https://ssrn.com/abstract=1766522> (accessed 15 July 2021).

<sup>296</sup> Article 19(2) of the African Continental Free Trade Agreement. Article 19(2) stipulates that in circumstances where the Agreement conflicts with other regional trade agreements, this agreement prevails to the extent of the specific inconsistency. The exception to this is what is provided for in article 19(2) of the Agreement.

<sup>297</sup> Ndomo A, 'Regional Economic Communities in Africa: A progress review' available at <https://www.tralac.org/images/news/Reports/Regional/Regional-Economic-Communities-in-Africa-A-Progress-Overview-Atiemo-Ndomo> (accessed 13 July 2021). 10

Further, the different levels of economic development continue to affect Africa's regional integration efforts. It is no gainsaying that the Member States in the West African region have varying economic development. Nigeria for example is considered the biggest economy in the region. The economic interest of Member States in combating anti-competitive practices within the region may not necessarily be the same. Some Member States like Sierra Leone is yet to have competition law, save for the Gambia, Ghana and Nigeria. This speaks to the fact that competition culture could be different among members States. In the ECOWAS region, for example, Nigeria, Cote d' Ivoire and Senegal account for almost ninety per cent of the integrational market and almost fifty per cent of all intraregional export.<sup>298</sup> Therefore, setting up a regional Authority to combat anti-competitive practices and foster competition among market players may not receive unanimous applause from big players in the regional market. The Member States must envisage these challenges and should be ready to tackle the same.

Furthermore, the lack of respect for the rule of law also impacts Africa's regional integration efforts. The expression 'rule of law' is multi-dimensional. In the context of regional integration, respect for the rule of law can be attributed to Member States submitting to the supremacy of regional law.<sup>299</sup> Also, a well-functioning democracy cannot be achieved without due regard for the rule of law; the same holds true in regional integration for the Member States to respect the regional law.<sup>300</sup>

Developing a successful regional competition regulatory framework within ECOWAS requires the Member States to submit to the regional authority. With experience in the past, a lack of respect for regional law within the ECOWAS region has been visibly evident.<sup>301</sup> The step towards setting up a regional competition law regulatory framework is a commendable move. ECOWAS however needs to carefully study the challenges encountered by other regional competition law regulatory frameworks in the world, learn from them and structure its framework to face emerging uncompetitive conduct.

---

<sup>298</sup> UNCTAD 'Economic Development in Africa Report: Strengthening Regional Economic Integration for Africa's Development' (2009) 14.

<sup>299</sup> Common Wealth of Nations *Rule of Law* available at <http://www.commonwealthofnations.org/commonwealth-in-action/rule-of-law-2/> (accessed 29 July 2021).

<sup>300</sup> Common Wealth of Nations *Rule of Law* available at <http://www.commonwealthofnations.org/commonwealth-in-action/rule-of-law-2/> (accessed 29 July 2021).

<sup>301</sup> *His Excellency Alhaji Samuel Sam-sumana v The Republic of Sierra Leone* 2017 (19) JUD/CCJ/ECW.

In conclusion, establishing a regional competition regulatory framework to achieve economic efficiency, fair trade practices and at the same time eliminating trade barriers among others, cannot be easily achieved without a well-thought-out implementation strategy ensuring that the Member States comply. Apart from the above possible challenges espoused, the challenge of the poor record of implementing goals within and among the Member States must also be considered. Though the ECOWAS regional competition regulatory framework seems to be tailored along with a centralised system, careful consideration must be given to the two types of systems, that is, the centralised system and a decentralised system, their disadvantages and uniqueness.<sup>302</sup> Whilst the centralised system consists of regional law and authority created by a regional treaty or regulations with comprehensive provisions, independent and distinct authority,<sup>303</sup> a decentralised system consist of a regional law created by regional treaty or protocol but no authority. The application of the law is dependent on individual Member States and enforcement is done through intergovernmental cooperation.<sup>304</sup> Therefore, since most of the ECOWAS Member States are still at the infancy stage of setting up their competition law system, a centralised approach is more suitable to back up inefficient domestic authorities.

### **3.5 Competition law and international trade**

Competition law and international trade are complementary at a certain point in achieving their goals though they diverge at another point.

#### **3.5.1 Convergence between competition law and international trade**

Chang, argues that promoting economic efficiency and consumer welfare through the means of competition requires an open market free from entry barriers and the safeguarding of free trade and effective competition.<sup>305</sup> He also maintains that competition policy and the law supports free trade and market liberalisation.<sup>306</sup> Chang further argues that trade policy enhances economic efficiency and consumer welfare through free trade and market liberalisation, whilst competition

---

<sup>302</sup> The EU and COMESA are typical examples of regional bodies that practices the centralised regional competition law framework whilst MERCOSUR is a typical example of the decentralised system.

<sup>303</sup> The COMESA Competition Regulation and the COMESA Competition Commission.

<sup>304</sup> The MERCOSUR regional competition law.

<sup>305</sup> Chang SW 'Interaction between Trade and Competition: Why a Multilateral Approach for the United States?' (2004) *Duke Journal of Comparative & International law* 6.

<sup>306</sup> Chang SW 'Interaction between Trade and Competition: Why a Multilateral Approach for the United States?' (2004) *Duke Journal of Comparative & International law* 6.

policy and law gear towards an open market and free trade to achieve economic efficiency and consumer welfare.<sup>307</sup> Similarly, Weiss argues that both competition law and trade law work towards enhancing welfare through the provision of efficient allocation of resources, which could either be by promoting competition or by lowering governmental barriers to trade.<sup>308</sup> Effective competition policies complement trade liberalisation agreements in the removal of barriers to the competitive process and play an important role in maximising the benefits of trade liberalisation initiatives.<sup>309</sup>

Further, both competition law and international trade work towards market access.<sup>310</sup> They strive to eliminate market barriers and promote efficiency and increase welfare.<sup>311</sup> Both competition law and trade law are complementary in the sense that both have common principles such as transparency, non-discrimination and the need for a ruled-base economic behaviour.<sup>312</sup> The same way the policy objectives of trade such as trade liberalisation, non-discrimination and transparency help facilitate robust competition in the market, the same applies to sound competition laws and policies and institutional framework which help to create a conducive environment to sustaining free and open trade among nations.<sup>313</sup>

The above shows that both competition law and international trade law are complementary and mutually supporting. Though this does not mean they do not diverge at some point.

### **3.5.2 Divergence between competition law and international trade**

Notwithstanding their complementary roles, the two diverge in other respects. As Sweeney notes, trade law and competition law have some critical points of departure.<sup>314</sup>

---

<sup>307</sup> Chang SW 'Interaction between Trade and Competition: Why a Multilateral Approach for the United States?' (2004) *Duke Journal of Comparative & International Law* 6.

<sup>308</sup> Weiss F 'From World Trade Law to World Competition law' (2000)23 *Fordham International Law Journal* 256.

<sup>309</sup> OECD Complementarities between Trade and Competition Policies, (1999) 12 Unclassified COM/TD/DAFFE/CLP (98)98/FINAL.

<sup>310</sup> Piilola A 'Is there a need for multinational competition rules?' (1999) 10 *Finnish YB Int'l L* 263.

<sup>311</sup> OECD 'Complementarities between Trade and Competition Policies' (1999) 12 Unclassified COM/TD/DAFFE/CLP (98)98/FINAL.

<sup>312</sup> OECD 'Complementarities between Trade and Competition Policies' (1999) 12 Unclassified COM/TD/DAFFE/CLP (98)98/FINAL.

<sup>313</sup> OECD 'Complementarities between Trade and Competition Policies' (1999) 12 Unclassified COM/TD/DAFFE/CLP (98)98/FINAL.

<sup>314</sup> Sweeney B 'Globalisation of competition and policy: some aspects of the interface between trade and competition' (2004) *Melbourn Journal of International Law* 375.

Competition laws are aimed at private behaviour that limits competition and hurts consumers and is used by governments to address trade restrictions by private firms within a nation's territorial borders.<sup>315</sup> Whilst trade laws are aimed at public behaviour, whereby governments create tariff and non-tariff barriers to protect domestic producers at the expense of foreign competitors.<sup>316</sup> The structures and processes of international trade regulation and competition law regulation are quite different. Whilst trade laws have international roots and have developed an international and unified structure for handling a broad range of disputes, the enforcement of competition rules has remained domestic and undiversified.<sup>317</sup> No doubt Epstein refers to competition law as the 'new Achilles heels', because, anti-competitive conducts like privately sponsored restrictive agreements, vertical anti-competitive agreements go beyond the reach of the WTO sanctions and are replacing the old barriers to free and fair trade<sup>318</sup>

Further, the applicable dispute resolution structures and remedies are different in both international trade law and competition law. Competition law has many dispute resolution structures since there are states with competition law to enforce.<sup>319</sup> The procedural requirements, party rules, burdens of proof and appeal processes are different and the remedies available for competition law are more severe, complex and far-reaching than trade remedies.<sup>320</sup> The reason for the difference in remedies is that whilst competition remedies are targeted at the conduct of private firms, trade remedies (except for anti-dumping remedies) are targeted at the state.<sup>321</sup>

In short, though the relationship between competition law and international trade is supportive in some respect. However, Chang argues, that in practice they may conflict with each other for many

---

<sup>315</sup> Epstein J. 'The Other Side of Harmony: Can Trade and Competition Laws Work Together in the International Marketplace?' (2002) 17 *American University International Law Review* 345.

<sup>316</sup> Epstein J. 'The Other Side of Harmony: Can Trade and Competition Laws Work Together in the International Marketplace?' (2002) 17 *American University International Law Review* 345.

<sup>317</sup> Sweeney B 'Globalisation of competition and policy: some aspects of the interface between trade and competition' (2004) *Melbourn Journal of International Law* 375.

<sup>318</sup> Epstein J. 'The Other Side of Harmony: Can Trade and Competition Laws Work Together in the International Marketplace?' (2002) 17 *American University International Law Review* 343- 344.

<sup>319</sup> Sweeney B 'Globalisation of competition and policy: some aspects of the interface between trade and competition' (2004) *Melbourne Journal of International Law* 375.

<sup>320</sup> Sweeney B 'Globalisation of competition and policy: some aspects of the interface between trade and competition' (2004) *Melbourne Journal of International Law* 375.

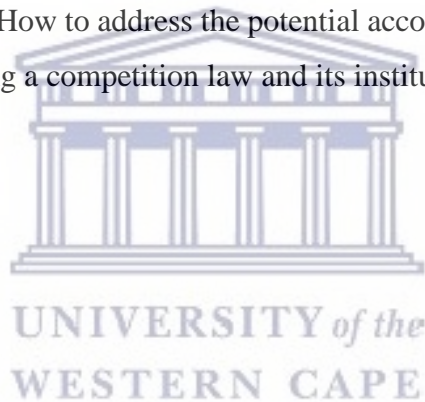
Sweeney B 'Globalisation of competition and policy: some aspects of the interface between trade and competition' (2004) *Melbourne Journal of International Law* 375.<sup>321</sup>

different reasons.<sup>322</sup> Their aims and aspirations may not always be the same. Aims such as regulating multinational mergers and global cartels may not necessarily be the direct aims and aspirations of international trade.<sup>323</sup>

### **3.6 Conclusion**

Given the above espoused, it is evident that Sierra Leone's draft competition Bill needs to include certain provisions befitting of a sound competition law legislation. Establishing an effective competition law institutional framework should be backed up by sound competition law. Both the law and the institutional framework must be designed in consonance with the ECOWAS competition law agreement, otherwise, the ECRA would be another failed regional bloc.

The accompanying challenges of competition law and international trade might be more apparent with the advent of the AfCFTA. How to address the potential accompanying challenges should be well thought out when developing a competition law and its institutional framework.



---

<sup>322</sup> Chang SW 'Interaction between Trade and Competition: Why a Multilateral Approach for the United States' (2004) *Duke Journal of Comparative & International law* 8.

<sup>323</sup> Sweeney B 'Globalisation of competition and policy: some aspects of the interface between trade and competition' (2004) *Melbourne Journal of International Law* 375.

## CHAPTER FOUR

### AN EFFECTIVE COMPETITION LAW ENFORCEMENT INSTITUTIONAL FRAMEWORK

‘Good institutional design is a critical component of good competition policy and competition law enforcement. The design of the institutions is like the design of a house: it must facilitate life within the house. Good institutional design takes account of the family's values and empowers life within its walls. Designs cannot be conjured in the abstract; they must fit the family that lives in the house, its aspirations, possibilities, and practical limits. Therefore, the good architect lives with the family before conceptualizing the design... (However) even good houses do not last forever. Environments and conditions change, needs change, and flaws appear at the seams of the plaster. This is the second level of the architect's work. Again, the solution is contextual. Building a new house with all modern equipment might be prescribed by outside advice-givers; but the family might be better satisfied with wise and fitting renovations to the house they have lived in for years.’<sup>324</sup>

#### 4.1 INTRODUCTION

An effective enforcement institutional framework is an important aspect of a competition law system. The rules should accompany a proper enforcement institutional framework. As Fox likely notes, the institutional design is a critical component.<sup>325</sup> The independence of the institution is also key, hence independence enables the competition institution to resist the pressure of serving special interest at the expense of public welfare and therefore bestows greater confidence and trust in its decisions.<sup>326</sup> Ensuring its effective operation, the institution must not be physically located in a government ministry.<sup>327</sup> Further, the institution should be given the power, necessary support and the requisite human resource to operate.<sup>328</sup>

Presently, in as much as there is no extant statute on competition law in Sierra Leone, there is also no independent enforcement institutional framework to address anti-competitive practices. As discussed in Chapter Two of this work, anti-competitive practices are somehow only provided for in piece-meal legislation. At the moment, the Ministry of Trade and Industry oversees the regulation of anti-competitive practices.<sup>329</sup> In this regard, even though there may not be a unique

---

<sup>324</sup> Fox, EM. ‘Antitrust and Institutions: Design and Change’ (2010) 41 *Loyola University Chicago Law Journal* 487-488.

<sup>325</sup> Fox, EM ‘Antitrust and institutions: Design and change’ (2004) 41 *LUCLJ* 487.

<sup>326</sup> Kovacic, W.E ‘Competition agencies, independence and political process’ in Drexl, J. Kerber, W. & Podszun R. eds, *Competition Policy and the Economic Approach* (2011) 291.

<sup>327</sup> UNCTAD, ‘Independence and accountability of competition law’ (2008) 6.

<sup>328</sup> OECD Independence of competition authorities – from design to practice (2016) 15-16 Unclassified DAF/COMP/GF available at [http://.one.oecd.org/document/DAF/COMP/GF\(2016\)5/en/pdf](http://.one.oecd.org/document/DAF/COMP/GF(2016)5/en/pdf) (accessed 2 November 2021).

<sup>329</sup> Sierra Leone: *An Investor's Guide* (2019)25 available at <https://slipa.org/wp-content/uploads/33800-Sierra-Leone-Government-Guide-d8-print.pdf> (accessed 18 June 2020).

institutional design that would fit all countries,<sup>330</sup> however, a country with a competition law system that has successfully stood the test of time could be looked at. Therefore, South Africa being a country with the most advanced competition law system in the African continent<sup>331</sup> is used in this research as a model that Sierra Leone can learn valuable lessons from. In this respect, Sutherland and Kemp aptly describe the enforcement institutional framework in South Africa that it is a hierarchy of three specialist institutions that apply and enforce the substantive rules of the competition law of South Africa.<sup>332</sup> The three specialist institutions are the Competition Commission, the Competition Tribunal and the Competition Appeal Court. Interestingly, Neuhoff *et al* posit that although the three institutions interact, they are however independent of each other.<sup>333</sup>

In this respect, this chapter examines the three-specialist competition law enforcement institutions of South Africa as well as the role of the Supreme Court of Appeal and the Constitutional Court in the enforcement of South Africa's competition law. Thereafter, the chapter considers the lessons that Sierra Leone can learn from South Africa's competition law enforcement framework and then offers a conclusion.

#### 4.2 The Competition Commission of South Africa

The Competition Commission is established by section 19 of the South Africa Competition Act.<sup>334</sup> The Competition Commission is the investigative and prosecutorial agency; it is empowered to investigate, control and evaluate restrictive business practices (both horizontal and vertical), abuse of dominant positions and mergers to achieve equity and efficiency in the South African market.<sup>335</sup> The Commission is an autonomous statutory body and is a juristic person. The first step of the enforcement of the Competition Act is the Commission. It is an independent entity that is an

---

<sup>330</sup> Jenny F, 'The institutional design of Competition Authorities: Debates and Trends' (2016) 1. Available at <https://www.europarl.europa.eu> (accessed 19 August 2021).

<sup>331</sup> Ten years of enforcement by the South African Competition Authorities: Unleashing Rivalry 199-2009 available at <http://www.comptrib.co.za/content/Documents/Info%20library/Reports/unleashing-rivalry-ten-years-of-enforcement-by-sa-competition-authorities.pdf> (accessed 4 September 2020).

<sup>332</sup> Sutherland, P. & Kemp, K. *Competition Law of South Africa* (2000)11.1.

<sup>333</sup> Neuhoff, M. *et al A Practitcal Guide to the South African Competition Act* (2017)14.

<sup>334</sup> The South Africa Competition Act 89 of 1998 (As amended). It must be noted that the Act has gone through several amendments. The most recent is the Competition Amendment 18 of 2018, with some provisions of the 2018 Amendment coming into force as from July 2019.

<sup>335</sup> Competition Commission of South African Annual Report: *celebrating 20 years of regulating for inclusive growth* (2018-19) 8.



agency of the Department of Trade, Industry and Competition.<sup>336</sup> The Commission is subject only to Constitution and the law.<sup>337</sup> Its decisions are appealed to the Competition Tribunal and the Competition Appeal Court.<sup>338</sup>

The detailed functions of the Commission are provided for in section 21 of the Act and include among others, implementing measures to increase market transparency, implementing measures to develop public awareness of the provisions of the Act, investigating and evaluating alleged prohibited practices.<sup>339</sup> It also considers exemption applications.<sup>340</sup> To ensure the consistent application of the provisions of the Act, the Commission also negotiates agreements with any regulatory authority.<sup>341</sup> This provision should be key in the Sierra Leone's draft competition Bill, having in mind the avalanche of state-owned enterprises and sector regulatory authorities within the country. Moreover, the Commission is empowered to refer matters to the Competition Tribunal (as the court of first instance in all competition law matters) and it has the standing to appear before the Tribunal.<sup>342</sup> The Commission can negotiate and conclude settlement agreements<sup>343</sup> and is empowered to approve small and intermediate mergers referred to it (with or without conditions).<sup>344</sup>

In order to keep with the pace of new emerging trends in the market, the Commission is further empowered to review legislation and public regulations, and report its findings to the Minister of Trade, Industry and Competition regarding any provision that allows uncompetitive behaviour.<sup>345</sup> This provision speaks to the reasons why laws need constant change to meet the dictates of societies as argued by different jurists in legal theory. Though it can be argued that this provision can be implied and need not necessarily be in an Act, providing the same in an Act makes it a statutory obligation and a constant reminder to an institution. The Commission also represents the

---

<sup>336</sup> Information available online at <http://www.thedtic.gov.za/know-the-dtic/agencies/> (accessed 2 October 2021).

<sup>337</sup> Section 20 (1) (a).

<sup>338</sup> Hartzenberg T, 'Competition Policy and Practice in South Africa: Promoting Competition for Development Symposium on Competition Law and Policy in Developing Countries' (2006) *Northwestern Journal of International Law & Business* 671.

<sup>339</sup> Section 21 of the Act.

<sup>340</sup> Section 21 (1) (d).

<sup>341</sup> Section 21 (1) (h).

<sup>342</sup> Section 21 (1) (f).

<sup>343</sup> Section 21 (1) (f) & (e).

<sup>344</sup> Section 13 – 14.

<sup>345</sup> Section 21 (1) (K).

public interest and acts as ‘claimant *cum* prosecutor’.<sup>346</sup> This public interest is what South Africans have in an open and unfettered competition of their economy.<sup>347</sup> Further, the Commission is tasked with prosecutorial powers to address the difficulties that ordinary citizens face to access the normal court channels.<sup>348</sup>

Furthermore, the Commission can only investigate anti-competitive conduct which is contemplated by the Act, if the Commission does the contrary then it would be acting beyond its jurisdiction.<sup>349</sup> In addition, the Commission’s powers of investigation provided for in the Competition Act cannot be circumscribed or limited by an order of a court.<sup>350</sup> In perspective, this is to ensure that there is no limitation in the fight against anti-competitive conduct.

Additionally, the Commission also offers written non-binding opinions on the Commission’s position on the provisions of the Act to external parties for a fee.<sup>351</sup> The opinion is geared towards providing guidance on the position that the Commission is likely to take in respect of certain transactions, agreements or practices.<sup>352</sup> The advisory opinion has no binding legal effect on the Commission and the Commission may at any time review its position in respect to the fact presented.<sup>353</sup> This practice is not clearly provided for in the Act, but contemplated in section 79A of the Competition Act.<sup>354</sup> However, to set proper rules on a non-binding advisory opinion from the Commission, the government of South Africa passed a regulation in March 2021 setting out in details provisions on non-binding advisory opinion.<sup>355</sup> The regulation now provides that the request for an advisory opinion must among other things be made in writing to the Commission;

---

<sup>346</sup> *Competition Commission v Pioneer Foods (PYT) Ltd* Case No. 91/CAC/Feb 10 (2010) 7. See *Woodlands Dairy and another v The Competition Commission (2010)* ZASCA 104, para 8.

<sup>347</sup> *Competition Commission v Pioneer Foods (PYT) Ltd* Case No. 91/CAC/Feb 10 (2010) 7.

<sup>348</sup> *Competition Commission v Pioneer Foods (PYT) Ltd* Case No. 91/CAC/Feb 10 (2010) 7

<sup>349</sup> *Sappi Fine Paper (Pty) Ltd v Competition Commission and Papercor* CC23/CAC/Sep 02 para 35-39.

<sup>350</sup> *SOS Support Public Broadcasting Coalition & Others v South African Broadcasting Corporation (SOC) Limited & Others* 2019 (1) SA 370 (CC).

<sup>351</sup> Request an Advisory Opinion available at <https://www.compcom.co.za/request-an-advisory-opinion/> (accessed 22 August 2021).

<sup>352</sup> Request an Advisory Opinion available at <https://www.compcom.co.za/request-an-advisory-opinion/> (accessed 22 August 2021).

<sup>353</sup> Request an Advisory Opinion available at <https://www.compcom.co.za/request-an-advisory-opinion/> (accessed 22 August 2021).

<sup>354</sup> Section 79A of the Competition Act.

<sup>355</sup> Regulations on non-binding Advisory Opinions, 2020 published in Government Notice 44310 in Gazette Vol. 248 of 23 March 2021.

the request should set out the name of the requesting party, markets in which the requesting party operates, reasons why the non-binding opinion is sought, the nature of the legal advice sought, relevant information to enable the Commission to determine whether the requesting party falls within the category of firms contemplated by the Act.<sup>356</sup> The regulation prescribes fees for non-binding advisory opinions.<sup>357</sup>

Finally, the non-binding advisory opinion does not constitute a decision or finding of the Commission in terms of the Act and does not fetter the Commission's discretion in the exercise of its functions.<sup>358</sup> The Commission in its discretion may at any time review, revise or withdraw its non-binding advisory opinion if it considers the opinion to have a likelihood of undermining the objectives of the Act.<sup>359</sup>

In sum, the practice of non-binding advisory opinion helps to keep serious firms abreast with practices that would be uncompetitive and saves the Commission from the hurdles of prosecution and subsequent penalties.

#### **4.2.1 The composition of the Competition Commission**

The executive staff of the Competition Commission consists of the Competition Commissioner and one or more Deputy Commissioners appointed by the Minister of Trade, Industry and Competition for a period of five years and may be re-appointed for another five years at the discretion of the Minister.<sup>360</sup> According to the Competition Act, the Competition Commissioner and Deputy Commissioners are required to have suitable qualifications and experience in economics, law, commerce industry or public affairs.<sup>361</sup>

The Competition Commission has eight divisions that carry out its functions and include:

First, the mergers and Acquisitions division: this division assesses mergers filed with the Commission to determine whether the merger has the likelihood to substantially prevent or lessen

---

<sup>356</sup> Regulation 4.1 to 4.5 on the Regulations on non-binding Advisory Opinions.

<sup>357</sup> Regulation 6.

<sup>358</sup> Regulation 9.

<sup>359</sup> Regulation 11.

<sup>360</sup> Sections 22 (1)& 23(1)

<sup>361</sup> Sections 22 (1)& 23(1)

competition in a market and whether it may not be justified on public interest grounds.<sup>362</sup> For example, it can assess the effect of the mergers on employment in South Africa, a particular industrial sector or region and the ability of small businesses or firms to compete.<sup>363</sup>

Secondly, the Market Conduct Division: this division investigate the abuse of dominance, prosecutes vertical restrictive practices.<sup>364</sup> It also assesses exemptions applications brought before the Commission and conduct market enquiries.<sup>365</sup>

Thirdly, the Cartels Division: this division investigates and prosecutes cartel conduct and collusive practices, evaluate corporate consolidations.<sup>366</sup> Cartel conducts typically include price-fixing, market allocation and collusive tendering.<sup>367</sup>

Further, the Legal Services Division: this division provides litigating service, legal expertise to the Commission and advisory opinions to the public.<sup>368</sup>

Moreover, the Economic Research Bureau Division: this division is the economic think tank of the Commission that provides economic expertise and enhances the Commission's knowledge and understanding of market dynamics.<sup>369</sup>

Additionally, the Advocacy Division: this division conducts a preliminary investigation of complaints, provide policy response, and advocacy to encourage compliance with the Act.<sup>370</sup> It also provides strategic planning and monitoring and manages the Commission's relations with international stakeholders, communication and screening.<sup>371</sup>

Also, Corporate Service Division: this division provides corporate support functions to the Commission such as human capital management, security and facilities, records management information resources services, information and communications technology.<sup>372</sup>

---

<sup>362</sup> The Competition Commission of South Africa Annual Report (2019-20): *Competition regulation for a growing and inclusive economy* 39-51.

<sup>363</sup> Neuhoff M *et al*, *A Practical Guide to the South African Competition Act* (2017) 15.

<sup>364</sup> The Competition Commission of South Africa Annual Report (2019-20) 39-41.

<sup>365</sup> The Competition Commission of South Africa Annual Report (2019-20) 39-41.

<sup>366</sup> The Competition Commission of South Africa Annual Report (2019-20) 39 & 46.

<sup>367</sup> These practices are prohibited by section 4(1) (b) of the Act.

<sup>368</sup> The Competition Commission of South Africa Annual Report (2019-20) 39 & 77.

<sup>369</sup> The Competition Commission of South Africa Annual Report (2019-20) 39 & 86.

<sup>370</sup> The Competition Commission of South Africa Annual Report (2019-20) 39 & 94.

<sup>371</sup> The Competition Commission of South Africa Annual Report (2019-20) 39 & 94.

<sup>372</sup> The Competition Commission of South Africa Annual Report (2019-20) 40 & 112.

Finally, the Finance division is responsible for financial management.<sup>373</sup>

In sum, the composition and divisions created within the Commission create room for expertise for a specific subject that the Commission deals with and thus enhance efficiency in the work of the Commission. Therefore, this is a good practice for a country like Sierra Leone that intends to have a competition law and a sound enforcement institutional framework.

#### 4.2.2 The complaint procedures of the Competition Commission

According to the competition Act, complaint proceedings concerning prohibited practices are commenced in either three ways. First, the Commissioner may initiate a complaint against an alleged prohibited practice (the *ex officio* complaints).<sup>374</sup> The Supreme Court of Appeal has held that initiation of a complaint by the Commissioner in terms of section 49B (1) of the Act can be informal and even tacit.<sup>375</sup> For example, an internal file note, email or memorandum might qualify as a ‘tacit’ complaint.<sup>376</sup> Secondly, any person may submit information on an alleged prohibited practice to the Commission in any manner or form.<sup>377</sup> Thirdly, any person may submit a complaint on an alleged prohibited practice to the Commission in the prescribed form.<sup>378</sup>

The initiation of complaint either by the Commission or a private party has to be competent and must pass the jurisdictional test.<sup>379</sup> The initiation must be done within three years that the prohibited practice occurred.<sup>380</sup> It is good drafting for the limitation period to be specific when the intention is not to place the same with the general limitation Act. This is an attribute that could be adopted by Sierra Leone when formulating its competition legislation.

The Act further envisaged the common law limitation under the principle of ‘double jeopardy’.<sup>381</sup> The Act provides that a complaint that had been adjudicated before the Tribunal may not be taken

---

<sup>373</sup> The Competition Commission of South Africa Annual Report (2019-20) 40.

<sup>374</sup> Section 49B (1); It has been alluded that the Commission does not really ‘initiate’ a complaint. What it does is to start a process by directing an investigation which process may lead referral to the Tribunal. See *Competition Commission v Yara (South Africa) (PTY) Ltd (784/12) ZASCA 107 (2013)* para 21.

<sup>375</sup> *Competition Commission v Yara (South Africa) (Pty) Ltd (784/12) ZASCA 107 (2013)* para 21.

<sup>376</sup> Kelly L *et al Principles of competition law in South Africa* (2017) 63.

<sup>377</sup> Section 49B (2) (a).

<sup>378</sup> Section 49B (2) (b).

<sup>379</sup> Section 3 (1) and it provides that the Act applies to all economic activities within, or having effect within South Africa.

<sup>380</sup> Section 67; the same was substituted by section 15.

<sup>381</sup> Section 67 (2); double jeopardy is a procedural defense in common law that prevents an accused person from being tried again on the same or similar charges following an acquittal in the same jurisdiction. This is different in civil law

to the Tribunal thereafter in respect of a firm or respondent under the same or another section of the Act if the issue substantially relates to the same conduct; otherwise, the firm or the respondent may successfully pursue an argument of *res judicata* (that the matter had been judged). Further, another limitation is an abuse of dominance.

Whether the complaint comes by any of the three means above, the Commissioner must direct the launching of an investigation into the complaint. Based on the outcome of the complaint, the Commission could pursue any of its three available courses. First, the Commission may refer the complaint to the Tribunal or part of it to the Tribunal for adjudication or the imposition of an administrative penalty if the Commission is of the view that the prohibited practice did occur.<sup>382</sup> If it only refers to some part of the complaint, the Commission must thereafter issue a notice of non-referral in respect of those particulars that were not referred.<sup>383</sup> Secondly, if the Commission is of the view that the said prohibited practice did occur, it is empowered by the Act to agree on appropriate settlement terms with the party or parties involved in the prohibited practice.<sup>384</sup> The terms of the settlement are put in a consent order and referred to the Competition Tribunal for its input and final approval.<sup>385</sup> Thirdly, the Commission may decline to refer the matter to the Tribunal if it is of the view that the evidence is insufficient to secure a conviction and must issue a notice of non-referral in respect of the same.<sup>386</sup>

#### **4.2.2.1 Complaints initiated by the Commission**

As already mentioned, a complaint can be initiated in three ways, either by the Commission, firms or any person in any manner or form or a prescribed form.<sup>387</sup> The initiation of a complaint by the Commission does not have prescribed formalities to adhere to.<sup>388</sup> In perspective, even with a cursory glance of the Act, it is easy to notice that the Commission seems to enjoy some flexibility with the initiation of complaint except for referral which will be discussed later. The Supreme

---

jurisdictions where there is 'peremptory plea' which may take the form of *autrefois acquit* (previously acquitted) or *autrefois convict* (previously convicted).

<sup>382</sup> Section 50 (3)

<sup>383</sup> Section 50 (2) (b). for further elucidation, see *Premier Foods (Pty) Ltd v Manoim No and Others 2016 (1) SA 445 (SCA)*.

<sup>384</sup> Section 49D

<sup>385</sup> Section 49D

<sup>386</sup> Section 50 (1) & (2) (b)

<sup>387</sup> Section 49B (1) & (2) (a) & (b)

<sup>388</sup> Section 49B(1)

Court of Appeal supports this point and has noted that while the complaint submitted by the Commission requires no formalities, the complaint initiated by a private person has to be in a 'prescribed form'.<sup>389</sup> The Supreme Court of Appeal further succinctly described the complaint initiated by the Commission as to what it means and had this to say:

'Taken literally 'initiating a complaint' appears to be an awkward concept. The Commission does not really 'initiate' or start a complaint. What it does is to start a process by directing an investigation, which process may lead to the referral of that complaint to the Tribunal. And it can clearly do so on the basis of information submitted by an informant...or because of what it gathers from the media reports; or because of what it discovers during the course of an investigation into a different complaint and/or against a different respondent. Since no formalities are required, s 49B (1) seems to demand no more than a decision by the Commission to open a case. That decision can be informal.'<sup>390</sup>

The purpose of the initiation of complaint and the investigations that follow thereon does not *ipso facto* (by the fact itself) offer the suspect firm an opportunity to put its case.<sup>391</sup> The Commission is not even obliged to give notice to the suspect, let alone inviting the suspect on a justifiable expedition of ascertaining the truth of the suspicion.<sup>392</sup> The suspect is entitled to put its case upon referral to the Tribunal.<sup>393</sup>

The privileges and flexibility afforded to the Commission in initiating a complaint give the Commission the upper hand to curb uncompetitive practices unhindered and with wider latitude. The privilege however seems disadvantageous to the suspect and appears at variance to the purport of justice. There should be no ambush in seeking justice.

Despite the above, the Commission after initiating a complaint, or a complaint submitted by another person, may publish a notice disclosing an alleged prohibited practice and invite any person who believes that the alleged practice has affected, or is affecting a material interest of that person to file a complaint in respect of the issue.<sup>394</sup> The rules provide that the Commission may consolidate two or more complaints under a common investigation if they concern the same firm

---

<sup>389</sup> *Competition Commission v Yara (South Africa) (Pty) Ltd & Others* (784/12) ZASCA 107 (2013) Para 21.

<sup>390</sup> *Competition Commission v Yara (South Africa) (Pty) Ltd & Others* (784/12) ZASCA 107 (2013) Para 21.

<sup>391</sup> *Competition Commission v Yara (South Africa) (Pty) Ltd & Others* (784/12) ZASCA 107 (2013) Para 24; *Simelane NO v Seven-Eleven Corporation SA (Pty) Ltd* 2003 (3) SA 64 (SCA) para17.

<sup>392</sup> *Competition Commission v Yara (South Africa) (Pty) Ltd & Others* (784/12) ZASCA 107 (2013) Para 24.

<sup>393</sup> *Competition Commission v Yara (South Africa) (Pty) LTD & Others* (784/12) ZASCA 107 (2013) Para 24.

<sup>394</sup> Rule 17 (1) of the Rules for the Conduct of the Proceedings of the Competition Commission Rules, Notice of 1 February 2001, Government Gazette No. 22025.

as a potential respondent.<sup>395</sup> The procedure as to what follows with the filing of two complaints is detailed in rule 17(3) (a) - (c) of the Competition Commission Rules of Procedure.<sup>396</sup>

Another means available to the Commission to have information is through market inquiries. The Commission on its own initiative, or response to a request made by the Minister, may conduct market inquiries at any time if it has reasons to believe that any feature or combination of features of a market for any goods or services prevents, distorts or restricts competition within that market.<sup>397</sup> However, the Commission is obliged to publish a notice in a Gazette at least 20 business days before the commencement of the market inquiry, setting out the terms of reference for the market inquiry and inviting members of the public to provide information to the market inquiry.<sup>398</sup>

Upon completion of the market inquiry, the Commission is obliged to publish a report of the inquiry in a Gazette and report the same to the Minister with or without recommendations, which may include, but not limited to recommendations for new or amended policy, legislation or regulations, recommendations to other regulatory authorities on competition matters.<sup>399</sup> With the information obtained in the course of the inquiry, the Commission may initiate a complaint and enter into a consent order with any respondent according to section 49D of the Act, initiate a complaint against any firm for further investigation, initiate and refer a complaint directly to the Competition Tribunal without further investigation, take any other action within its powers as provided for in the Act or take no further action.<sup>400</sup>

The Competition Act also empowers the Commission to conduct impact studies to assess the impact of the decisions, rulings or judgments of the three competition authorities.<sup>401</sup> Upon completing an impact study, the Commission must complete an impact study report, submit it to the Minister of Trade, Industry and Competition. Thereafter, the impact report must be tabled before parliament.<sup>402</sup>

---

<sup>395</sup> Rule 17 (2) of the Competition Commission Rules.

<sup>396</sup> Rule 17 (3) (a)-(c) of the Competition Commission Rules.

<sup>397</sup> Section 43A – 43G of the Act.

<sup>398</sup> Section 43B (2).

<sup>399</sup> Section 43C (1) (a)-(b).

<sup>400</sup> Section 43C (3) (a)-(e).

<sup>401</sup> Section 21A, inserted by the section 17 of the Competition Amendment Act of 2018.

<sup>402</sup> Section 21A (1) – (7).



#### 4.2.2.2 Complaints initiated by private parties

The Act does not place limitations as to who may submit information to the Commission concerning an alleged prohibited practice. Other than the Commission, any person may submit information to the Commission concerning an alleged prohibited practice in any manner or form or a complaint with regards to an alleged prohibited practice in a prescribed form.<sup>403</sup> The phrase ‘any person’ in this sense, means a complainant, who is a private person or a firm.<sup>404</sup> When the complaint has been submitted to the Commission, should the Commission decline to refer the complaint to the Tribunal, the complainant is empowered by the Act to refer the complaint directly to the Tribunal, but subject to its rules of procedures and the referral should be done in a prescribed form.<sup>405</sup> Upon referring the complaint to the Competition Tribunal, the complainant may, whether or not the Tribunal has commenced hearing on the complaint, apply to the Tribunal for an interim order in respect of the alleged practice.<sup>406</sup>

Interestingly, during, on or after the completion of the investigation of a complaint, the complainant may consent to an award of damages and the damages could be civil damages.<sup>407</sup> This does not mean that the complainant may not be awarded a cost regarding a complaint referred to the Tribunal.<sup>408</sup> Alternatively, the complainant is also at liberty to withdraw his complaint to the Commission at any time before it is referred to the Tribunal and the same does not prevent the Commission from continuing to investigate the matter as if it had initiated it.<sup>409</sup>

Where a complainant desires his anonymity regarding information submitted to the Commission in terms of section 49B (2) (a), his identity is treated as such, though the person may subsequently waive the same in writing to the Commission.<sup>410</sup> However, a completed form CC1 cannot be restricted information.<sup>411</sup> With respect to section 49B (2), the Supreme Court of Appeal drew a clear distinction between the submission of information on the one hand and the submission of a

---

<sup>403</sup> Section 49 (2) (b) & (c).

<sup>404</sup> See section 1.

<sup>405</sup> Section 51(1) & (2).

<sup>406</sup> Section 49 (1).

<sup>407</sup> Section 49D (1) & (3); section 49D (3) read with (b) & section 65.

<sup>408</sup> Section 57(2) (b)

<sup>409</sup> Rule 16 (1)&(2) of the Competition Commission Rules of Procedure, published in the Government Notice 22025 Gazette in Government Gazette Vol. 428 of 01 February 2001.

<sup>410</sup> Rule 14 (1) (b) (i) of the Competition Commission Rules.

<sup>411</sup> Rule 14 (1) (C) (i) of the Competition Commission Rules.

complaint by a private person on the other hand.<sup>412</sup> The Court further held the view that it makes no difference to whom a complaint was aimed at, and if what was submitted amounts to a complaint that A and B were involved in an agreement of price-fixing, or collusive tendering, it makes no difference if the complaint was only against A and B.<sup>413</sup> The court viewed that from the dictates of the language, it is also, *a fortiori*, a complaint against B.<sup>414</sup> This seems a good provision, hence it seeks to prevent a partner in crime from escaping justice with the cloak of technicality of the law. The same holds true for the anonymity of identity, hence it encourages any person to contribute to the fight against uncompetitive conduct.

In short, though there are no limitations as to who can submit complaints to the Commission, this liberty is however streamlined when the complaint gets to the Tribunal stage of the proceedings. Irrespective of the jurisdictional test and the limitation criteria set by the Commission, the private person would then have to pass the interest test in the complaint at the Tribunal. These criteria seem to prevent frivolous and vexatious actions.

#### **4.2.2.3 Powers of the Competition Commission**

The Commissioner upon initiating or receiving a complaint is obliged to direct an inspector to investigate the complaint as quickly as possible.<sup>415</sup> Also, at any time during the investigation, the Commissioner may, where necessary, designate one or more persons to assist the inspector.<sup>416</sup> Further, at any time during the investigation, the Commissioner may summon any person who is believed to be able to furnish any information on the subject of the investigation or have in possession or control of any book, document or other object on the subject.<sup>417</sup> Normally, the person is given 14 days within which to respond to the request, though it may be extended by the Commission upon good cause shown.<sup>418</sup> Both the complainant and the respondent are required to be truthful when responding to information; the same does not put them in a position to answer self-incriminatory questions.<sup>419</sup>

---

<sup>412</sup> *Competition Commission v Yara South Africa (Pty) Ltd* SCA 784/12 para 16.

<sup>413</sup> *Competition Commission v Yara South Africa (Pty) Ltd* SCA 784/12 para 16.

<sup>414</sup> *Competition Commission v Yara South Africa (Pty) Ltd* SCA 784/12 para 16.

<sup>415</sup> Section 49B (3).

<sup>416</sup> Section 49B (4). See *Competition Commission v Pentel South Africa (Pty) Ltd* 27/CR/Apr 11 para1-2, 19-20.

<sup>417</sup> Section 49A (1).

<sup>418</sup> Neuphoff, M *et al* A Practical Guide to the South African Competition Act (2006) 245.

<sup>419</sup> Section 49A (2).

The person so summoned by the Commissioner may be interrogated before the Commissioner or a person authorised by the Commissioner at a time and place specified in the summons or at a time and place specified in the summons to deliver or produce to the commissioner, or a person authorised by the Commissioner, any book, document or other object specified in the summons.<sup>420</sup>

The person being interrogated is under no obligation by law to answer self-incriminating questions.<sup>421</sup> Even if it is the case that a self-incriminatory answer is given, the same will be inadmissible in evidence against the person from whom the said evidence was adduced except in a case of perjury or an offence contemplated in section 72 or section 73 (2) (d).<sup>422</sup>

The summons issued must meet a clear format. The summons must be clear on the subject of investigation and must be within the ambit of the complaint initiated.<sup>423</sup> *Inter alia*, the summons must survive the legality and intelligibility test.<sup>424</sup> The scope of the summons may not be required to be wider than the complaint initiated.<sup>425</sup> The validity of the summons must appear *ex facie* (on the face of it) the document and should not depend on possible requests for further particulars.<sup>426</sup> Should the summons fail to meet the required standard, it may be set aside.<sup>427</sup>

It follows that the processes relating to initiation of complaint, the standard of the summons, are somewhat strict, and thus required to be met. Suffice it then to say that such a strict standard could pose a bar to private persons who may genuinely want to initiate a complaint regarding uncompetitive conduct but lacks the resources to do so. Therefore, the said requirements should be relaxed with regard to private persons.

#### **4.2.2.3.1 Authority to enter and search with a warrant**

According to the Act, a high court judge, a regional magistrate or a magistrate may issue a warrant to enter and search any premises within whose jurisdiction the search is to be carried out.<sup>428</sup> In order to ensure sincerity of the process, the warrant is issued, if, from information on oath or

---

<sup>420</sup> Section 49A (1) (a) & (b).

<sup>421</sup> Section 49A (2).

<sup>422</sup> Section 49A (3).

<sup>423</sup> *Woodlands Dairy Pty (Ltd) & Milkwood Dairy (Pty) Ltd v Competition Commission* (2010) ZASCA 104 para 26-41.

<sup>424</sup> *Woodlands Dairy Pty (Ltd) & Milkwood Dairy (Pty) Ltd v Competition Commission* (2010) ZASCA 104 para 35.

<sup>425</sup> *Woodlands Dairy Pty (Ltd) & Milkwood Dairy (Pty) Ltd v Competition Commission* (2010) ZASCA 104 para 35.

<sup>426</sup> *Woodlands Dairy Pty (Ltd) & Milkwood Dairy (Pty) Ltd v Competition Commission* (2010) ZASCA 104 para 31.

<sup>427</sup> *Woodlands Dairy Pty (Ltd) v Competition Commission* (2009) ZACAC 3 para 50-54.

<sup>428</sup> Section 46 (1).

affirmation, there is reasonable cause to believe that prohibited practice has occurred, is taking place or is likely to occur at the said premises, or things connected with the investigation is in possession of a person resident at the premises.<sup>429</sup>

Ensuring clarity, though the warrant can be issued at any time, it must identify the premises to be entered and searched and must authorise an inspector or a police officer to enter and search.<sup>430</sup> For the inspector, a certificate of appointment could be shown to the person affected and a copy of the affidavit through which the Commission obtained the warrant.<sup>431</sup> The warrant is valid until executed, or cancelled by the authority that issued it or by a similar authority, or the purpose for which it was issued has elapsed or has expired.<sup>432</sup> The Act also provides that the warrant should be executed during the day unless the authority that issued it authorises the same to be executed at night at a time reasonable in the circumstance.<sup>433</sup>

The Act further provides that a person authorised by the warrant should immediately after executing the warrant, if the owner or person in control of the premises searched is present, he must provide identification to that person and inform the person about the authorising authority and must provide a hard copy of the warrant to the person or person named in it.<sup>434</sup> If no person is present, affix a copy of the warrant to the premises at a conspicuous place.<sup>435</sup>

In circumstances where while executing the warrant, the police officer assisting the inspector face resistance, the officer could use reasonable force in the circumstance like breaking the door or window of the premises to overcome the resistance.<sup>436</sup> Before using force, the police officer must audibly demand admission and announce the purpose of entry, unless if the officer reasonably believed that doing so might induce someone to destroy the object of the search.<sup>437</sup> Search done in

---

<sup>429</sup> Section 46 (1) (a) & (b).

<sup>430</sup> Section 46 (2) (a) & (b).

<sup>431</sup> Section 24 (4), section 46 (6) (a) (i)-(ii). See also *Pretoria Portland Cement Company Ltd & Another v Competition Commission & Others* (2002) ZASCA 63 para53 – 59; *Janse Van Rensburg & Another v Minister of Trade & Industry & Another* 2000 (11) BCLR 1235 (CC) para 35.

<sup>432</sup> Section 46 (3) (a), (b), (c) & (d).

<sup>433</sup> Section 46 (4).

<sup>434</sup> Section 46 (5) & (6) (a) (i) & (ii).

<sup>435</sup> Section 46 (6) (b).

<sup>436</sup> Section 49 (7).

<sup>437</sup> Section 49 (8).

the absence of a person responsible for the premises is required to be compensated by the Commission if the person suffers damage as a result of the forced entry.<sup>438</sup>

The Commission while executing the warrant must do so in conformity with the rule of law and the rights guaranteed by the Constitution.<sup>439</sup> Also, the right of privacy of the person against whom the warrant will be issued must be respected.<sup>440</sup>

#### **4.2.2.3.2 Authority to enter and search without a warrant**

An inspector who is not authorised by a warrant may nevertheless enter and search premises other than a private dwelling.<sup>441</sup> The inspector must believe on reasonable grounds, that had he gone for a warrant, a delay would have ensued in obtaining the warrant and such delay would defeat the purpose or object of the search.<sup>442</sup> Immediately before conducting the search, the inspector is obliged to provide identification to the owner or person in control of the premises to be searched and the authority by which the search will be conducted.<sup>443</sup> For the process not to appear arbitrary and abuse of the right of privacy, the inspector is required to get permission from the owner or person in charge of the premises to enter and search.<sup>444</sup> The entry and search without a warrant must also be done during the day except doing the same at night is justifiable and reasonable in the circumstance.<sup>445</sup> Where there is a resistance in conducting the search, reasonable force is required to be used and any damage in the process, the Commission is required to compensate.<sup>446</sup>

The same powers that apply to an inspector or police officer with a warrant to enter and search premises apply to another without a warrant.<sup>447</sup> In this regard, the inspector or police officers may *inter alia*, search any person in a premises with reasonable grounds to believe that the person is in personal possession of an article or document that pertains to the investigation, examine any article

---

<sup>438</sup> Section 49 (9).

<sup>439</sup> *Pretoria Portland Cement Company Ltd & Another v Competition Commission & Others* (2002) ZASCA 63 para 56, 71, 73-74.

<sup>440</sup> *Pretoria Portland Cement Company Ltd & Another v Competition Commission & Others* (2002) ZASCA 63 para 56, 71, 73-74.

<sup>441</sup> Section 47(1).

<sup>442</sup> Section 47(2)(b).

<sup>443</sup> Section 47 (2).

<sup>444</sup> Section 47(a).

<sup>445</sup> Section 47(3).

<sup>446</sup> Section 49 (7)-(8) & 49(9).

<sup>447</sup> Section 48(1).

or document in those premises connected to the investigation.<sup>448</sup> They may request information about any article or document from the owner, a person in control or any person in possession of the article or document; take the extract from, or make copies of any book or document found on the premises connected to the investigation; use computer systems on the premises, examine and obtain copies of data generated and well attach and remove if necessary for examination or safekeeping from the premises anything connected to the investigation.<sup>449</sup> The rule against self-incrimination similarly applies to this process.<sup>450</sup>

It must be noted that to carry out entry and search as espoused above, the conduct must be done with strict regard for decency and order with regards to a person's right to dignity, freedom, security and privacy.<sup>451</sup> During the search, only a female inspector or police officer may search a female person and a male person, a male inspector or police officer.<sup>452</sup> The inspector or police officer must before questioning anyone, advise that person of his right to be assisted by a lawyer, and allow that person to exercise that right.<sup>453</sup> Anything removed from the premises during the search; a receipt must be issued to the owner or person in control of the premises and must be returned as soon as practicable upon achieving the purpose for which it was removed.<sup>454</sup> However, the search does not apply to privileged information.<sup>455</sup> Nevertheless, if an owner or person in control refuses to give an article or document connected to the investigation, the inspector or police officer may request the registrar or the Sheriff of the high court with jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is privileged.<sup>456</sup>

The Commission is also empowered to carry out dawn raids by investigating persons connected or associated with anti-competitive conduct without prior notice.<sup>457</sup>

---

<sup>448</sup> Section 48(1)(c).

<sup>449</sup> Section 48(1) (d)- (h).

<sup>450</sup> Section 48 (2).

<sup>451</sup> Section 49 (1).

<sup>452</sup> Section 49(2).

<sup>453</sup> Section 49 (3) (a) & (b).

<sup>454</sup> Section 49 (4) (a)&(b)

<sup>455</sup> Section 49(5).

<sup>456</sup> Section 49(6).

<sup>457</sup> Neuhoff M *et al* *A Practical Guide to the South African Competition Act* (2017) 376.

Though the South African competition law enforcement institutions are specialist institutions, there are however weaknesses.

First, the Competition Commission offers written non-binding opinion on the provisions of the Act to external parties on the provisions of the Act as way of guidance on the position of the Commission on certain agreements, transaction or practices in terms of section 21(gF) and section 79A of the Competition Act. It is however unfair to these external parties that the Commission is not bound to the very opinions it gives to the public by holding itself out as an expert in that domain. This in a way creates uncertainty amongst the business community. Any review, revision or withdrawal by the Commission on expert opinion once given to the public must be well communicated and firms who have acted on the same in reliance should not suffer in consequence.

Furthermore, section 49B(2)(b) of the Competition Act provides that the initiation of a complaint by a private person requires to be in a 'prescribed form', no formality is however required by the complaint initiated by the Commission. The reasoning behind this position is difficult to come to terms with, because, the Commission is deemed to have all the tools and resources to initiate a complaint unlike a private person who may not have the required resources. It therefore follows, that the strict formality requirement may frustrate the cause of justice in the cause of anti-competitive conduct by a private party who may not have the courage to follow the strict adherence of the formality rule. It is acknowledged that in section 49B(2)(a), the Competition Act does make provision for members of the public to submit information in any format and on the basis of which the Competition Commission may initiate an investigation.

### **4.3 The Competition Tribunal of South Africa**

The Competition Tribunal is established by the Act and has jurisdiction in the entire Republic.<sup>458</sup> It is a juristic person, a Tribunal of record and exercises its functions in accordance with the Act.<sup>459</sup> The Tribunal is a specialist administrative Tribunal and has adjudicative functions as well.<sup>460</sup> It is the court of first instance in the enforcement framework established by the Competition Act. The Tribunal was established to exercise powers in the interest of the general public and as well as the

---

<sup>458</sup> Section 26 (1)

<sup>459</sup> Section 26 (1) (b)- (c).

<sup>460</sup> Kelly L *et al* Principles of Competition Law in South Africa (2017) 60.

interpretation of the Act.<sup>461</sup> It has no inherent jurisdiction and is mandated by the Act to adjudicate on matters referred to it by the Commission or by private parties.<sup>462</sup>

The Tribunal is empowered by the Act to adjudicate on conduct prohibited by the Act, consider large mergers, hear appeals from, or review decisions that the Commission referred to it and make rulings or orders incidental to the performance of its functions provided for by the Act.<sup>463</sup> The procedures of the Tribunal are governed by rules enacted according to section 27(2) of the Act referred to as the Competition Tribunal Rules of Procedure.<sup>464</sup> Although the Tribunal is required to conduct hearings in accordance with the rules, where the rules are silent on an issue before the Tribunal, it can follow a procedure that may not be prejudicial to the parties; thus the High Court rules could be relied on, though not bound by it.<sup>465</sup>

#### **4.3.1 Complaint referrals to the Competition Tribunal by the Competition Commission**

The Act provides that the Commission can refer a complaint to the Tribunal for adjudication at any time after initiating a complaint.<sup>466</sup> This means that the Commission is not bound by a time limit. However, this does not mean that the Commission can embark on an investigation *ad infinitum* (without end or limit); it must direct an inspector to embark on an investigation as quickly as possible.<sup>467</sup> ‘As quickly as possible’ is a question of fact, which can be easily misinterpreted. For clarity purposes, the time frame must be certain, as in the case of a complaint referred by a private party. Also, the Commission is the legislature’s ‘plaintiff of first choice’ that prosecutes cases in the public interest.<sup>468</sup>

The Act provides that complaint referral whether by the Commission or by a private party must be in a prescribed format.<sup>469</sup> The Commission is required to indicate the names of the parties referred

---

<sup>461</sup> *Competition Commission v Senwes Ltd* (2012) ZACC 6 para 18.

<sup>462</sup> Kelly L *et al Principles of Competition Law in South Africa* (2017) 60. See *Woodlands Diary (Pvt) Ltd and Another v Competition Commission* (2010) para 12, where it was held that complaint referred is a necessary jurisdictional fact for the exercise of the Tribunal’s powers in respect of the prohibited practice.

<sup>463</sup> Section 27 (1) (a)-(d), section 16.

<sup>464</sup> Published in Government Gazette Notice 22025 in Government Gazette Vol. 428 on February 2001.

<sup>465</sup> Ndlovu PN *Competition Law and Cartel Enforcement Regimes in the Global South: Examining the effectiveness of Co-operation in South-South Regional Trade Agreement* (Unpublished LLD thesis, University of the Western Cape, 2017) 119.

<sup>466</sup> Section 50 (1).

<sup>467</sup> Section 49B (3).

<sup>468</sup> Sutherland P & Kemp K. *Competition Law of South Africa* (2014) 11.4.3.1.

<sup>469</sup> Section 51 (2). The Competition Tribunal Rules refers to complaints referred to by the Commission as ‘Form CT1 (1)’ and the ones refers by the private party as ‘Form CT1 (2)’.



to as respondents to the Tribunal and the material facts that gave rise to the complaint (that is, the alleged conduct said to have contravened the Competition Act must be described with sufficient clarity for the party who must answer these allegations).<sup>470</sup> In practice, the Commission explains the material facts in an affidavit and prays for an administrative penalty to be levied.<sup>471</sup> In addition, the Tribunal Rules makes provision on the formalities of the complaint proceedings in respect of the form, answer, reply, amendment, completion of complaint files, the conduct of its hearing, pre-hearing conferences and settlements.<sup>472</sup>

#### **4.3.2 Complaint referrals to the Competition Tribunal by private parties**

According to the Act, a private party or firm may refer complaints to the Tribunal in the following circumstance: when the Commission issues a notice of non-referral; when the Commission by effluxion of time, that is, one year, unless extended by a mutual consensus by the Commission and the complainant will be deemed to have non-referred a complaint;<sup>473</sup> an application for interim relief by a complainant who has filed a complaint with the Commission; in the consideration of a merger, the subject of the Commission's decision at the request of a party to a small or intermediate merger, trade union, employee representative or employee in an intermediate merger; in an appeal of the Commission's decision to grant or refuse an application for exemption from the prohibited practice provisions of the Act or another person who has got substantial interest and is affected by the decision; application to intervene in the proceedings of the Tribunal; and in applications for relief under the Tribunal's general powers such as interdict where parties to a transaction fail to notify a merger.<sup>474</sup>

Regarding the mutual consensus on non-referral, there is no guideline in the Act as to how it should be done.<sup>475</sup> The Tribunal has nevertheless suggested that the Commission seeks to have a clear method on how the extension can be negotiated and should not be done on an ad hoc basis but all records on extension must be kept.<sup>476</sup>

---

<sup>470</sup> *Netstar (Pty) Ltd v Competition Commission* 2011 (3) SA 171 (CAC) para 26.

<sup>471</sup> Kelly L *et al Principles of Competition Law in South Africa* (2017) 65.

<sup>472</sup> Rule 14 -25 of the Competition Tribunal Rules of Procedure. See also Ndlovu PN (Unpublished LLD thesis, University of the Western Cape, 2017) 123.

<sup>473</sup> Section 50 (2) (b) & section 50 (4).

<sup>474</sup> Sutherland P & Kemp K. *Competition Law of South Africa* (2014)11.4.3.1.

<sup>475</sup> Sutherland P & Kemp K. *Competition Law of South Africa* (2014) 11.6.5.1.

<sup>476</sup> Ndlovu PN (Unpublished LLD thesis, University of the Western Cape, 2017)121-122.

A complaint referred by a private party may only traverse the particulars of the act contained in the initial complaint to the Commission; should the complainant thereafter wishes to expand the scope of the referral such as adding parties, or particulars not contained in the initial complaint to the Commission, the complainant must file a fresh complaint with the Commission.<sup>477</sup> Kelly *et al* argue that it preserves the specialist investigative and prosecutorial role of the Commission on enforcement.<sup>478</sup> It is submitted that this process clearly put the complainant and the Commission on an unequal arm, and may equally discourage other complainants who may not have the fortitude and resources to start the process all over. However, the constitutional court has held that the Tribunal has the power to adopt an inquisitorial approach in proceedings and it is not limited to matters traversed in the complaint referral but can determine a complaint brought to its attention in the course of the proceedings.<sup>479</sup>

Referral can also be made by a civil court to the Tribunal if the court is seized of a matter and a party has raised conduct prohibited by the Act, the court in this instance is not required to determine the matter on its merit.<sup>480</sup> The court will then refer the issue to the Tribunal to be determined on its merit if it is satisfied that the issue raised is not frivolous or vexatious and the resolution of the issue and the final outcome are required to be determined.<sup>481</sup> Again, where a matter is before a civil court that has been determined either by the Tribunal or the appeal court, the civil court is bound by that decision.<sup>482</sup> The Tribunal is not a court but a specialist administrative body whose decisions are administrative and in line with the common law and the Promotion of Administrative Justice Act No. 3 of 2000.<sup>483</sup>

The Act also provides that a complaint cannot be referred to the Tribunal against any firm that has been a respondent in a matter that had been completed before the Tribunal ‘under the same or other section of the Act’ and the conduct is substantially the same.<sup>484</sup> This is similar to the common law principle of ‘double jeopardy’, that a juristic person cannot be tried twice for the same offence.

---

<sup>477</sup> Kelly L *et al* *Principles of Competition Law in South Africa* (2017) 67.

<sup>478</sup> Kelly L *et al* *Principles of Competition Law in South Africa* (2017) 67.

<sup>479</sup> *Competition Commission v Senwes Ltd* (CCT 61/11) [2012] ZACC 6 para 48-50.

<sup>480</sup> Section 65 (2).

<sup>481</sup> Section 65 (2) (b) (i)-(ii).

<sup>482</sup> Section 65 (2) (a).

<sup>483</sup> Ndlovu, P.N (Unpublished LLD thesis, University of the Western Cape, 2017) 124.

<sup>484</sup> Section 67 (2).

#### 4.4 The Competition Appeal Court of South Africa

The Competition Appeal Court is established by the Competition Act, and is contemplated in section 166 (e) of the Constitution and has similar status to a high court.<sup>485</sup> The court has jurisdiction in the entire Republic and is a court of records.<sup>486</sup> The Competition Appeal Court is a specialist appellate court and has jurisdictions to consider reviews or appeals from decisions of the Competition Tribunal.<sup>487</sup> The Competition Appeal Court has original jurisdiction in certain matters relating to the jurisdiction of the Commission and the Tribunal and any constitutional matter emanating from the Act and a question whether the appeal falls within its exclusive jurisdiction.<sup>488</sup> Nevertheless, the Competition Appeal Court and the Competition Tribunal share exclusive jurisdiction in terms of the interpretation and application of the Act (regarding provisions on restrictive practices, abuse of dominance and exemption application), investigations, merger evaluation and adjudication.<sup>489</sup>

The operations and procedures of the Competition Appeal Court are provided for in detail in the Rules for the Conduct of Proceedings in the Competition Appeal Court (referred to as the Competition Appeal Court Rules). In situations where the rules do not make provision for a specific issue before it, the court has the discretion to follow a procedure where no prejudice will be caused.<sup>490</sup> Hence, the rules of court are for the convenience of the court; therefore, undue formalism on procedure must be avoided in order to achieve the purpose of the Act in pursuit of justice.<sup>491</sup> Since the Competition Appeal Court has the status of the high court, it has the power to entertain non-compliance with the time limit prescribed by statute and has shown this flexibility with respect to the time of lodging an appeal in merger cases.<sup>492</sup>

The Competition Appeal Court's appellate jurisdiction is subject to the Act and the common law principle of judicial review and derives its legitimacy from the 1996 Constitution and the constitutional doctrine of legality.<sup>493</sup> It follows, that the right to seek review from the court of

---

<sup>485</sup> Section 36(1) (a).

<sup>486</sup> Section 36 (1) (b)-(c).

<sup>487</sup> Sutherland P & Kemp K. *Competition Law of South Africa* (2014) para 11.5.1.

<sup>488</sup> Sutherland P & Kemp K. *Competition Law of South Africa* (2014) para 11.5.3.

<sup>489</sup> Section 62 (1) (a).

<sup>490</sup> Sutherland P & Kemp K. *Competition Law of South Africa* (2014) para 11.5.2.

<sup>491</sup> Sutherland P & Kemp K. *Competition Law of South Africa* (2014) para 11.5.2.

<sup>492</sup> Sutherland P & Kemp K. *Competition Law of South Africa* (2014) para 11.5.2.

<sup>493</sup> Sutherland P & Kemp K. *Competition Law of South Africa* (2014) para 11.5.5.

appeal is premature without the decision of the Tribunal. According to section 37(2) of the Act, the Competition Appeal Court has the power to render judgment, or make an order, confirm, amend or set aside any decision of the Tribunal or remit a matter to the Tribunal for a further hearing.<sup>494</sup> The power of the court of appeal to supersede the Tribunal's decision is not absolute, as long as the Tribunal has not capriciously exercised its powers, applied wrong principles or showed bias in its judgment, it cannot override the Tribunal's decision.<sup>495</sup>

At this point, it must be considered whether an appeal can be made against the decision of the Competition Appeal Court to the Supreme Court of Appeal or the Constitutional Court or whether the Competition Appeal Court is the final court of appeal on competition matters.

#### **4.5 The Supreme Court of Appeal of South Africa**

The jurisdiction of the Supreme Court of Appeal regarding specialist areas like competition law and labour law matters has been clarified in the Constitutional Amendment Act of 2012.<sup>496</sup> The 2012 amendment provides that the Supreme Court of Appeal may decide appeals in any matter arising from the high court or a court similar to a high court except to labour or competition matters as may be determined by an Act of Parliament.<sup>497</sup> It, therefore, follows, that the Supreme Court of Appeal's jurisdiction on appeal in competition matters has been *ipso facto* ousted by this amendment.

Prior to the 2012 amendment, the Supreme Court of Appeal has held, that it has jurisdiction to consider section 62 matters, though the Act provides otherwise.<sup>498</sup> The Supreme Court further held that any legislation that vests final appellate jurisdiction to an appeal court apart from the Supreme Court should be seen in light of the appellate structure created by the Constitution.<sup>499</sup> Also, that the Constitution provides that the Supreme Court may decide appeals in any matter and the highest court of appeal except in non-constitutional matters.<sup>500</sup> It has been argued that the Supreme Court of Appeal considering appeals on specialised issues will be problematic; hence it has no expertise

---

<sup>494</sup> Section 37 (2) (a)-(b).

<sup>495</sup> Sutherland P & Kemp K. *Competition Law of South Africa* (2014) para 11.5.4.

<sup>496</sup> Section 4 of the Constitution Seventeenth Amendment Act 72 of 2012.

<sup>497</sup> Section 4 of the Constitution Seventeenth Amendment Act 72 of 2012.

<sup>498</sup> *American Natural Soda Ash Corporation v Competition Commission* 2005(6) SA 158 (SCA) para 8-14.

<sup>499</sup> *National Union of Metalworkers v Fry's Metals (Pty) Ltd* 2005 (3) SA 318 (SCA) para5-33

<sup>500</sup> *American Natural Soda Ash Corporation v Competition Commission* 2005(6) SA 158 (SCA) para 11.2.

on the issue and will create undue delay and legal uncertainty.<sup>501</sup> Therefore, a solution was provided by the Seventeenth Constitutional Amendment in 2012.

#### **4.6 The Constitutional Court of South Africa**

The Constitutional Court is the highest court in the Republic and may decide constitutional matters, any other matter if the Constitutional Court grants leave to appeal on a point of law that is of public importance.<sup>502</sup> This provision is corroborated by the Competition Act and the Supreme Court of Appeal confirming the same.<sup>503</sup> Sutherland and Kemp argue that an appeal on ‘section 62 matters’ from the Competition Appeal Court can be made to the constitutional court.<sup>504</sup> Section 3 of the Constitution Seventeenth Amendment Act of 2012 now makes it a condition for leave to be sought to the Constitutional Court.<sup>505</sup> It follows that if a constitutional issue is raised in a matter, and leave sought from the Constitutional Court is granted, the Constitutional Court may assume jurisdiction and decide on the matter.

#### **4.7 Lessons for Sierra Leone from the competition law institutional framework of South Africa**

The three specialist institutions established by the Competition Act to deal with competition issues is a feature unique to South Africa. Whilst the Competition Commission handles investigations and prosecutorial functions, the Competition Tribunal deals with adjudicative functions and the Competition Appeal Court reviews appealed issues from the Tribunal. Though these institutions complement each other, they are independent of themselves as well. With a thorough assessment of the competition law enforcement institutional framework of South Africa, it can be submitted that these institutions create the platform to seek specialization on every subject that borders on competition matters. This in turn creates room for efficiency, effectiveness, trust, and satisfaction in pursuit of justice in competition matters. The several divisions in the Commission are a pointer; hence it employed different skills and expertise in the Commission. This enforcement framework

---

<sup>501</sup> Ndlovu PN (Unpublished LLD thesis, University of the Western Cape, 2017) 129.

<sup>502</sup> Section 76 of the Constitution of the Republic of South Africa (As Amended by section 3 of the Constitution Seventeenth Amendment Act of 2012).

<sup>503</sup> Section 62 (3); also see *American Natural Soda Ash Corporation v Competition Commission* (2005) para 10.

<sup>504</sup> Sutherland P & Kemp K. *Competition Law of South Africa* (2014) 11.5.7.

<sup>505</sup> Section 3 of the Constitution Seventeenth Amendment Act of 2012.

is a system worth emulating by jurisdictions intending to put in place a competition law enforcement institutional framework like Sierra Leone.

An important aspect of any competition law institutional framework to function effectively without much restrictions and control is independence. No doubt, Alves *et al* argue, that the institution should be structured enough to be able to make decisions impartially, unhindered by political influence and external pressure.<sup>506</sup> Kovacic buttresses this point when he holds that independence enables the competition institution to resist the pressure of serving special interest at the expense of public welfare, and thus entrust confidence and trust in its decisions.<sup>507</sup> It has also been suggested that the institution must not be located in a government ministry.<sup>508</sup> Therefore, jurisdiction like South Africa understanding the importance of independence makes its Competition Commission independent.<sup>509</sup> This is a feature worth emulating.

The processes and procedures including regulations of the Commission from the stage of an investigation, initiation of complaints, non-referral, non-binding opinion and reviews, adjudication of complaints by the Tribunal, appeal to the Competition Appeal Court are processes that are well structured and worth emulating. This does not mean, there are no accompanying challenges especially so on the part of private complainants. Challenges regarding initiation of complaints by private parties to the Tribunal and those referred to the Tribunal and others.

In short, South Africa may not have been the only country in the continent with the most advanced competition law system if its enforcement institutional framework were poorly designed. The importance of a well-structured enforcement institutional framework has been well supported by competition law experts. Fox, a prominent competition law expert argues that a good institutional design is an important factor for good competition policy and enforcement.<sup>510</sup> She buttresses her point by illustrating the example of a good house that must facilitate and empower life within, and the house must fit in the family that lives in it, its aspirations, possibilities and practical limits.<sup>511</sup>

---

<sup>506</sup> Alves S *et al* 'Principles for the independence of Competition Authorities' (2015) 11.

<sup>507</sup> Kovacic WE 'Competition agencies, independence and political process' in Drexel J. Kerber, W. & Podszun R. eds, *Competition Policy and the Economic Approach* (2011) 291.

<sup>508</sup> UNCTAD, 'Independence and accountability of competition law' (2008) 6.

<sup>509</sup> Section 20.

<sup>510</sup> Fox, EM. 'Antitrust and Institutions: Design and Change' (2010) 41 *Loyola University Chicago Law Journal* 487.

<sup>511</sup> Fox EM 'Antitrust and Institutions: Design and Change' (2010) 487..

Whilst Marcos holds that competition policy and law fail because of poor institutional quality.<sup>512</sup> These are important issues that must be considered when putting in place a competition law enforcement institutional framework.

#### **4.8 Conclusion**

A well-structured enforcement institutional framework is an important component of an effective competition law system. The law may not be well implemented without a robust institutional framework in place. The manner, in which South Africa designed its institutional framework and its processes, is a system worth emulating. This does not mean, that one size may fit all, either because of economic and cultural differences; but a jurisdiction like Sierra Leone can learn from South Africa, and design its institutional framework to fit its own situation.



---

<sup>512</sup> Marcos F 'Developing Countries Need Competition Laws and Policy' (2006) *Institution de Empresa Business School*. Available at <https://privpapers.ssrn.com> (accessed 15 August 2020).

## CHAPTER FIVE

### FINDINGS, CONCLUSIONS AND RECOMMENDATIONS: WHAT SHOULD BE REFLECTED IN REGARDS TO THE ENFORCEMENT INSTITUTIONS

*'Institutional Structure demonstrates that the causes of observed policy outcomes, good and bad, often reside in the institutional framework. Seemingly potent conceptual insights may fizzle, or create mischief, if the institutions that must apply them are deformed'.<sup>513</sup>*

#### 5.1 Summary of findings

As the world becomes a global village, international trade has become the new world order. As such, the desire of individual countries to dominate the market space is apparent. Therefore, developed developing and least developed countries have realised that unchecked markets create new dangers. In which case, stronger firms or individuals would dominate the market, breed anti-competitive conduct and frustrate other participants. The emergence of the AfCFTA would even make this possibility even more apparent in the African continent if the Agreement establishing the trade area fails to negotiate and enforces rules on competition law. In this vein, continental, regional and individual countries have embarked on developing policies and laws to regulate these uncompetitive practices as a pathway to economic efficiency and consumer choices. Jurisdiction like South Africa has been able to gain success in this venture with not just a competition law, but the law backed with a robust enforcement institutional framework to checkmate uncompetitive conducts. The South African enforcement institutional framework being the model that this study recommends Sierra Leone to learn from equally has its own challenges. Therefore, the challenges, as well as the successes, have been used as a form of recommendations in 5.3 of this chapter.

At the regional level, the EU has been successful in implementing its regional competition law. The AfCFTA negotiation on competition policy is yet to be held. ECOWAS has taken the bold step to establish ERCA with a view to implementing the regional competition rules. To complement this venture, member's states of ERCA like Nigeria, the Gambia and Ghana have a competition statute in place; Sierra Leone though a member is yet to get to this stage, not to talk of an enforcement institutional framework. Also, though suggested that the enforcement institution

---

<sup>513</sup> Kovacic WE 'The Institutions of Antitrust Law: How Structures Shapes Substance' (2012) 110 *Michigna.Law Review* 1020.



should not be housed in a government institution, the Ministry of Trade and Industry in Sierra Leone oversees Anti-competition matters.<sup>514</sup>

## **5.2 Conclusion**

South Africa as the most successful competition law enforcement regime in the continent did not develop its system in a vacuum. Rather, studied the success and pitfalls of competition law systems in other jurisdictions like the USA, Canada, UK and designed a system to fit its socio-economic context. Getting to the stage where South Africa currently finds itself, took time and deliberate action to create the institutions that the country has today. Tough decisions were taken for the benefit of the state and its citizenry amidst tough resistance.

South Africa's three specialist's competition law enforcement institutions continue to do commendable enforcement actions in the fight against uncompetitive conduct in South Africa. The procedures and processes in the initiation of complaints, referral and non-referral by the Competition Commission to the Competition Tribunal for adjudication and the appeal process to the Competition Appeals Court are well-thought-out. Presently in Sierra Leone, the piecemeal legislation on competition are yet to yield success in the fight against uncompetitive practices, and all the specific sector regulatory authorities that address uncompetitive conducts are state-owned. Uncompetitive conducts such as price-fixing, abuse of dominance, collusive tendering are common in the country. Sierra Leone's draft competition Bill is grossly inadequate to address these anti-competitive issues. Since the Consumer Protection Policy and the Competition Policy were developed concurrently in 2012 with a view to develop statutes on the same, only the Consumer Protection Act has been passed.<sup>515</sup>

## **5.3 Recommendations**

In order for Sierra Leone to have a competition law with an effective enforcement institutional framework to address uncompetitive conduct in the country, the following are a summary of the recommendations that must be adhered to:

---

<sup>514</sup> See 4.5 & 4.1 of this study.

<sup>515</sup> See the Consumer Protection Act .7 of 2020.

- a. Instead of establishing a competition law Bureau that will be tasked with both investigative and administrative function and supervised by a non-executive board appointed by the President as the present Sierra Leone's draft competition Bill provides, Sierra Leone can consider learning from South Africa and have a competition law statute and establish three specialist institutions to address anti-competitive conduct that has an effect in Sierra Leone.

First, an independent institution should be established and tasked with the primary responsibility of investigating and prosecuting anti-competitive practices. For efficiency purposes and streamlining its work, this institution can be divided into specialist divisions addressing the different practices governed by the Competition law Commission namely, mergers and acquisitions, cartels, and other prohibited practices. The investigative institution can also have ancillary divisions, namely economic research, legal services, advocacy, as well as corporate services and finance. The GoSL should train lawyers, judges and economists in the field of competition law who will be employed in these specialist institutions. Trained and qualified personnel to spearhead these institutions are necessary to achieve success.

Secondly, to complement the competition Act, the rules must also be formulated to clearly spell out procedural issues. However, in as much as it is a good practice of the South African system to give the Commission wider latitude in the initiation of complaints, rigid measures should not be placed on private complaints from members of the public to encourage more engagement from the public in the fight against uncompetitive conduct. The practice of non-binding advisory opinion that is currently utilised by the South African Competition Commission should be emulated to keep firms and business enterprises abreast of what amounts to uncompetitive conduct.

- b. An adjudicative body that specifically hears and determine complaints referred to it by the investigative body should be established. As with South Africa, this adjudicative body will be the designated court of first instance in all competition law matters and have jurisdiction over the entire Republic of Sierra Leone. Similarly, the rules and procedures on transfer and adjudication process of the adjudicatory body should be formulated. Unlike the South

African Competition Act that does not provide any guideline on how a complainant's consent to an extension can be obtained regarding non-referral of complaints, Sierra Leone should learn from this weakness and provide guidelines on non-referral of complaints. This is important because doing so will help the investigative body have a clear method on how extensions can be negotiated.

- c. A specialist appellate body endowed with jurisdiction to consider reviews or appeals from decisions of the adjudicative body should be established. The appellate body must be a court of record and must have a status similar to the high court, (thus, the high court in Sierra Leone has similar status as the high court in South Africa). It must also have jurisdiction in the entire Republic of Sierra Leone. This court must be equipped with judges who have gone through specialist training on competition law. Due to the specialist nature of competition law matters, the appellate body should have final appellate jurisdiction. However, section 122 of the 1991 Constitution of Sierra Leone gives the supreme court of Sierra Leone final appellate jurisdiction in Sierra Leone.<sup>516</sup> Section 122 above is an entrenched clause and cannot be simply amended except by a referendum.<sup>517</sup> In the circumstance, it is recommended that in the meantime, Supreme Court judges are trained on competition law matters.
- d. The three specialist competition law institutions that Sierra Leone may put in place need not copy in wholesale, the names used by the South Africa Competition Authorities. Rather, what the three institutions do is of utmost importance. In this regard, Sierra Leone should have an independent investigator without being referred to as a Competition Commission. In fact, the name Bureau may be maintained, but its substance, what it does, its powers, functions and independence can follow the South Africa Competition Commission. The same goes for the adjudicative body and the appellate body. Sierra Leone need not call the adjudicative body a Competition Tribunal and the appellate body the Competition Appeal Court respectively, but different names could be adopted. What is important is the substance, powers and functions of these institutions.

---

<sup>516</sup> Section 122 of the Constitution of Sierra Leone Act 6 of 1991.

<sup>517</sup> Section 108 of the 1991 Constitution of Sierra Leone.

- e. The independence of the above three specialist institutions is of utmost importance. The practice of the Ministry of Trade and Industry in Sierra Leone overseeing anti-competitive conduct is not ideal as it could affect the independence of the competition authorities that Sierra Leone may put in place. The non-executive board established by the Sierra Leone's draft competition Bill to oversee the competition Bureau will equally not create an environment conducive for independence. This is because the appointees to this board are also employees in other government Ministries and agencies. With this practice, the possibility of conflict of interest may not be far-fetched and independence can be a challenge.
- f. In order to complement a robust competition law enforcement institutional framework, there should be a sound competition law statute. This statute must capture all issues pertaining to anti-competitive conduct. Therefore, since Sierra Leone merely has a draft competition Bill that is yet to be tabled before parliament, the inadequacies of the said Bill must be addressed. In this vein, all stakeholders including, but not limited to, the relevant government institutions, the Sierra Leone Bar Association, businessmen, economists, and ERCA must be consulted to have a final draft Bill. The Bill must not also be at variance with the commitments to ERCA and the AfCFTA. When the final Bill has been adopted, public awareness of it will be necessary.
- g. Although Sierra Leone and South Africa do not have the same socioeconomic status and political history, this does not mean that Sierra Leone cannot learn good lessons from South Africa in setting up its competition law system especially so that South Africa has the most successful competition law system in the Africa continent. Therefore, the wholesale coping from South Africa is not recommended, but Sierra Leone can use some of the features that South Africa has and amend them to better suit Sierra Leone's needs.

## BIBLIOGRAPHY

### BOOKS

1. Bork RH *The Antitrust Paradox: A Policy at war with itself* (1978) New York: The Free Press.
2. Brassey M *Competition Law* (2002) Cape Town: Juta
3. Colino S. M *Competition Law of EU and UK* 7 ed (2011) Oxford: Oxford University Press.
4. Das T & Kumar U *Competition Policy & Law Made Easy* ed (2001) CUTS: CUTS Centre for International Trade, Economics & Environment.
5. Dunne N *Competition Law and Economic Regulation* ed (2015) Cambridge: Cambridge University Press.
6. Gelhorn E & Kovacic WE *et al Antitrust law and Economics in a Nutshell* 5 ed (2004) West Academic Publishing.
7. Hovenkamp H *Antitrust Enterprise: Principles and Execution* (2005) Harvard University Press.
8. Hovenkamp H *Economics and Federal Antitrust Law* (1985) Minnesota: West Group.
9. Kelly L *et al Principles of Competition Law in South Africa* (2017) Cape Town: Oxford University Press.
10. Lewis D *Enforcing Competition Rules in South Africa: Thieves at the Dinner Table* (2012) Johannesburg: Jacana Media.
11. Neuhoff M *et al A Practical Guide to the South African Competition Act* (2017) Durban: Lexis Nexis.
12. Shepherd WG & Shepherd JM *The Economics of Industrial Organisation* 5ed (2007) Beijing Renmin University of China Publishing House.
13. Sutherland P & Kemp K *Competition Law of South Africa* (2000) Durban: Lexis Nexis.
14. Taylor MD *International Competition Law: A New Dimension for the WTO?* (2006) Cambridge: Cambridge University Press.
15. Wish R & Bailey D *Competition Law* 7 ed (2012) Oxford: Oxford University Press.

## CHAPTERS IN BOOKS

1. Bleazard J 'Pigeon-holed by precedent: form versus substance in the application of South African Competition Law' in Lewis D (ed) *Building New Competition Regimes* (2013) Cheltenham: Edward Edgar Publishing.
2. Brassey M 'Introduction' in Brassey M (ed) *Competition Law* (2002) Cape Town: Juta.
3. Kovacic, W.E 'Competition agencies, independence and political process' in Drexler, J. Kerber, W. & Podszun R. eds, *Competition Policy and the Economic Approach* (2011) Cheltenham: Edward Elgar Publishing Limited.
4. Wilson J 'Institutions, Procedures and Remedies' in Brassey M (ed) *Competition Law* (2002) Cape Town: Juta.

## JOURNAL ARTICLES

1. Alter KJ *et al* 'A New International Human Rights Court for West Africa: the ECOWAS Community Court of Justice (2013) vol.107: 737, *The American Journal of International Law* 737- 779.
2. Alves S *et al* 'Principles for the Independence of Competition Authorities' (2015)11 *Competition Law International* 13-27.
3. Aydin U. & Büthe T. 'Competition Law and Policy in Developing Countries: Explaining Variations in outcomes, Exploring Possibilities and Limits' (2016).79 *Law and Contemporary Problems* 1-36.
4. Carnegie A 'The Gospel of Wealth' (1889)148 *the North American Journal* 1- 41.
5. Chang SW 'Interaction between Trade and Competition: Why a Multilateral Approach for the United States?' (2004) *Duke Journal of Comparative & International law* 1-37.
6. Draper P *et al* 'SACU, Regional Integration and the Overlap Issue in Southern Africa: from Spaghetti to Cannelloni?' - Trade Policy Report No.5 (2007) *Acumen Publishing Solutions, Johannesburg* 1-39.
7. Epstein J. 'The Other Side of Harmony: Can Trade and Competition Laws Work Together in the International Marketplace?' (2002) 17 *American University International Law Review* 343-368.
8. Erasmus G. 'Is the SADC trade regime a rules-based system?'(2011) Vol.1 *SADC Law Journal* 17-34.

9. Fox E.M. 'Antitrust and Institutions: Design and Change' (2010)41 *Loyola University Chicago Law* 473-488.
10. Fox EM 'Roundtable on: The impact of Cartels on the poor – Intergovernmental Group of Experts on Competition Law and Policy (2013) *New York University* 1-27.
11. Fox EM 'South Africa, Competition Law and Equity: Restoring equity by antitrust in a land where markets were brutally skewed' (2019) 3 *CPI Antitrust Chronicle* fall 1-14.
12. Fox EM & Sullivan LA 'Antitrust – retrospective and prospective: where are we coming from? Where are we going?' (1987)62 *The New York University Law Review* 936-970.
13. Gal M S 'Regional Competition Law Agreement: An important step for Antitrust Enforcement' (2009) *University of Toronto Law Journal* 240-261.
14. Gal MS & Wassmer IF 'Regional Agreements of Developing Jurisdiction: Unleashing the potential in competition policy and Regional Integration Developing Countries' (2012) Bakhom M, Drexl J, Gerber D, Fox E *SSRN e-Journal* 1-22.
15. Galdos M. 'Lifecycles of Competition Systems: Explaining Variation in the implementation of new Regimes' (2016) 79 *Law and Contemporary Problems* 85-122.
16. Hartzenberg T, 'Competition Policy and Practice in South Africa: Promoting Competition for Development Symposium on Competition Law and Policy in Developing Countries' (2006) *Northwestern Journal of International Law & Business* 667-686.
17. Islam MR 'A WTO multilateral framework for competition policy and trade-induced development- Debunkig their complementarity in developing countries' (2004) 5 *J World Investment & Trade* 491-508.
18. Kovacic WE 'The Institutions of Antitrust Law: How Structures Shapes Substance' (2012) 110 *Michigna.Law Review* 1019-1044.
19. Mahmud MS & Hossaini RI 'Development of competition: National and International Perspective' (2016) *BiLD Law Journal* 100-122.
20. Marcos F 'Do Developing Countries Need Competition Law and Policy? (2006) *SSRN Electronic Journal* 1-17.
21. Ndlovu, P.N 'National disasters and Competition Law: COVID-19 block exemptions under South African Competition Law' (2021) *European Journal of Economics, Law and Social Sciences* (2) 540-551.

22. Ndlovu, P.N ‘Campbell v Republic of Zimbabwe: A moment of truth for the SADC Tribunal’ (2011) *SADC Law Journal* 63-79.
23. Piilola A ‘Is there a need for multinational competition rules?’ (1999) 10 *Finish YB Int’l L* 263.
24. Sweeney B ‘Globalisation of competition and policy: some aspects of the interface between trade and competition’ (2004) *Melbourn Journal of International Law* 375.
25. Weiss F ‘From World Trade Law to World Competition law’ (2000)23 *Fordham Law Journal* 250-273.

### **SIERRA LEONE CASES**

1. *His Excellency Alhaji Samuel Sam-Sumana v The Republic of Sierra Leone* 2017 (19) JUD/CCJ/ECW.
2. *Michael Aboud & Sons v Pee Cee and Sons (Pan Tap Store)* 1970-71 ALR S.L Series.
3. *T. Choitrams & Sons v Registrar-General* (1964/66) ALR Sierra Leone series.
4. *Wadi Aboud & Sons (SL) LTD v Shyam Kanayala Dewani* Case No: 070/16.

### **SOUTH AFRICA CASES**

1. *American Natural Soda Ash Corporation v Competition Commission* 2005(6) SA 158 (SCA)
2. *Campbell & others v Republic of South Africa* SADC (T) No.2/2007.
3. *Commissioner of the Competition Commission v The General Council of the Bar of South Africa* (2002) 4 All SA 145 (SCA).
4. *Competition Commission v Babelegi Workerwear and Industrial Supplies CC* 186/CAC/JUN20.
5. *Competition Commission and Babelegi Workwear Overall Manufacturers and Industrial Supplies CC* (CR003Apr20)
6. *Competition Commission and Cedar Pharmaceuticals CC t/a Bel-Kem Pharmacy* (CO015May20).
7. *Competition Commission and Dis-Chem Pharmacies Ltd* (CR008Apr20).
8. *Competition Commission and Evergreen Fresh Market (Pty) Ltd* (CO009Apr20).
9. *Competition Commission and Mandini Pharmacy (Pty) Ltd* (CO013Apr20).
10. *Competition Commission and Main Hardware (Pty) Ltd* (CO007Apr20).



11. *Competition Commission v Pentel South Africa (Pty) Ltd* 27/CR/Apr 11.
12. *Competition Commission v Pioneer Foods (PYT) Ltd* Case No. 91/CAC/Feb 10 (2010).
13. *Competition Commission and Retrospective Trading 199/a Merlot Pharmacy* (CO018May20).
14. *Competition Commission v Senwes Ltd* (2012) ZACC 6.
15. *Competition Commission and Sunset Pharmacy CC* (CO016May20).
16. *Competition Commission v Yara (South Africa) (Pty) Ltd* (784/12) ZASCA 107 (2013)
17. *Industrial Development Corporation of South Africa Ltd v Anglo-American Holdings Ltd* 45/LM/JUN02 and 46/LM/June02 (2002).
18. *Janse Van Rensburg & Another v Minister of Trade & Industry & Another* 2000 (11) BCLR 1235 (CC).
19. *Minister of Economic Development & others v Competition Tribunal & others* 2012 (2) ZACA.
20. *National Union of Metalworkers v Fry's Metals (Pty) Ltd* 2005 (3) SA 318 (SCA).
21. *Netstar (Pty) Ltd v Competition Commission* 2011 (3) SA 171 (CAC).
22. *Premier Foods (Pty) Ltd v Manojim No and Others* 2016 (1) SA 445 (SCA).
23. *Pretoria Portland Cement Company Ltd & Another v Competition Commission & Others* (2002) ZASCA 63.
24. *Sappi Fine Paper (Pty) Ltd v Competition Commission and Papercor* CC23/CAC/Sep.
25. *Simelane NO v Seven-Eleven Corporation SA (Pty) Ltd* 2003 (3) SA 64 (SCA).
26. *SOS Support Public Broadcasting Coalition & Others v South African Broadcasting Corporation (SOC) Limited & Others* 2019 (1) SA 370 (CC).
27. *Woodlands Dairy and another v The Competition Commission* (2010) ZASCA 104.
28. *Woodlands Dairy Pty (Ltd) & Milkwood Dairy (Pty) Ltd v Competition Commission* (2010) ZASCA.

## **OTHER CASE**

1. *Swift & Co. v United States* 1905 (196) US 375.

## **CONSTITUTIONS**

1. The Constitution of the Republic of Sierra Leone Act 6 of 1991.
2. The Constitution of the Republic of South Africa Act 108 of 1996.
3. The South African Constitution Seventeenth Amendment Act 72 of 2012.

## **SIERRA LEONE LEGISLATION**

1. The Banking Act of Sierra Leone Act 6 of 2019.

2. The Sierra Leone Companies Act 5 of 2009.
3. The Companies Regulations, Statutory Instrument of Sierra Leone No. 5 of 2015.
4. The Investment Promotion Act of Sierra Leone No 10 of 2014.
5. The Merchandise Marks Act Chapter 245 of the laws of Sierra Leone 1960.
6. The Mines and Minerals Act 12 of 2009.
7. The Public Private Partnership Act 11 of 2014.
8. The Sierra Leone Consumer Protection Act 7 of 2020.
9. The Sierra Leone Investment and Export Promotion Agency Act 3 of 2007.
10. The Sierra Leone Electricity and Water Regulatory Commission Act 13 of 2011.
11. The Sierra Leone National Electricity Act 16 of 2011.
12. The Sierra Leone National Electricity (Amendment) Act 3 of 2018.
13. The Sierra Leone Public Procurement Act 14 of 2004.
14. The Telecommunications Act of Sierra Leone Act 9 of 2006 (as amended) by the Telecommunications (Amendment) Act 1 of 2015.
15. The Trade Marks Act of Sierra Leone 8 of 2014.
16. The Trade Marks Act, Chapter 244 of the Laws of Sierra Leone 1960.
17. The Sierra Leone Water Company Act 4 of 2017.

#### **SOUTH AFRICA LEGISLATION, REGULATIONS, NOTICES AND GUIDELINES**

1. The Competition Act of the Republic of South Africa Act 89 of 1998 (As Amended).
2. The Board of Trade and Industry Act 28 of 1923.
3. The Maintenance and Promotion of Competition Act 96 of 1979.
4. The Competition Amendment Act of the Republic of South Africa 2018.
5. COVID-19 Block Exemption for the Healthcare Sector 2020, Regulation Gazette No. 11056 Vol.657 (dated 19 March, 2020) No 43114.
6. COVID-19 Block Exemption for the Rental Property Sector 2020 (No. 43134).
7. Consumer and Customer Protection and National Disaster Management Regulations and Directions, 2020, Regulation Gazette No.11057 Vol. 657 (date 19 March 2020) No.43116.
8. Regulation 2.2 of the Covid-19 Block Exemption for the Banking Sector, Government Notice No. 355, Government Gazette No. 43127, 23 March 2020.

9. Regulation 3.1-Regulation 3.2 of the Covid-19 Block Exemption for the Hotel Industry, Government Notice No.422, Government Gazette No. 43175, 27 March 2020.
10. Regulations on non-binding Advisory Opinions, 2020 published in Government Notice 44310 in Gazette Vol. 248 of 23 March 2021.
11. Regulation of Monopolistic Conditions Act 24 of 1955.
12. Rules for the Conduct of the Proceedings of the Competition Commission Rules, Notice of 1 February 2001, Government Gazette No. 22025.
13. Rules for the Conduct of Proceedings in the Competition Tribunals Government Gazette Notice 22025 in Government Gazette Vol 428 on 01 February 2001.
14. Proposed Guidelines for the Competition Policy: A Framework for competition, competitiveness and Development, 27 November 1997.

#### **OTHER LEGISLATION**

15. The Gambia Competition Act 4 of 2007.
16. The Kenya Competition Act 12 of 2010.
17. The Zambia Competition and Consumer Act 24 of 2010.
18. The Federal Republic of Nigeria Competition and Consumer Protection Act 2019.
19. The Competition Act of the United Kingdom chapter 41 of 1998.
20. The Sherman Act of 1890 15 U.S.C

#### **BILL**

1. Draft Competition Bill of Sierra Leone 2018.

#### **REGIONAL AND MULTILATERAL TREATIES/ AGREEMENT**

1. African Continental Free Trade Agreement
2. The COMESA Competition Regulation.
3. The Cotonou Agreement (2000).
4. The ECOWAS Competition Supplementary Act A/SA.1/12/08 Adopting Community Competition Rules and the Modalities of their application within ECOWAS.

5. The ECOWAS Supplementary Act A/SA.2/12/08 on the establishment, functions and adoption of the regional Competition Authority for ECOWAS.
6. The General Agreement on Trade in Services (GATS).
7. The General Agreement on Tariffs and Trade (GATT).
8. The MERCOSUR regional competition law.
9. Southern African Customs Agreement of 2002
10. Treaty Establishing the Southern African Development Bank 1992.
11. Treaty on European Union 1992.

### **INTERNATIONAL ORGANISATIONS**

1. OECD 'Complementarities between Trade and Competition Policies' (1999) 12 Unclassified COM/TD/DAFFE/CLP (98)98/FINAL.
2. OECD 'Global Forum on Competition: Challenges faced by small Agencies and those in Developing Economies (DAF/COMP/GF/WD) (2017).
3. UNCTAD 'Economic Development in Africa Report: Strengthening Regional Economic Integration for Africa's Development' (2009).
4. UNCTAD, 'Independence and accountability of competition law' (2008).
5. UNCTAD 'Independence and accountability of competition authorities (2008).
6. UNCTAD 'The United Nations Set of Principles and Rules on Competition' (2000) TD/RBP/CONF/10/REV.

### **PUBLISHED AND UNPUBLISHED THESES**

1. Chapeyama S *Developing a regional competition regulatory framework in the Southern African Development Community (SADC)* (unpublished LLM thesis, University of the Western Cape, 2014).
2. Ndlovu PN *Competition Law and Cartel Enforcement Regimes in the Global South: Examining the effectiveness of Co-operation in South-South Regional Trade Agreements* (Unpublished LLD thesis, University of the Western Cape, 2017).
3. Popadopoulos A *The Role of the Competition law and Policy of the EU in the Formation of International Agreements on competition* (published Ph.D. thesis, London School of Economics and Political Science 2014).

4. Phooko M.S *The SADC Tribunal: its jurisdiction, Enforcement of its judgments and the Sovereignty of its member States* (unpublished LLD thesis, University of South Africa 2016).

## POLICY DOCUMENTS

1. Competition Commission of South African Annual Report: *celebrating 20 years of regulating for inclusive growth* (2018-19).
2. Manuel, C & Katiyo, L. DFID: *Business Environment Reform Diagnostic-Sierra Leone* (2017).
3. Mouton D *et al* Report of the Commission of Enquiry into Monopolistic Conditions 1905, (1977).
4. Sierra Leone: *An Investor's Guide* (2019).
5. Sierra Leone's Medium-Term National Development Plan (2019-2023).
6. The Future of the WTO: *Addressing institutional challenges in the new millennium* (WTO 2004 Sutherland Report) 29
7. The Sierra Leone Competition and Consumer Protection Policy (2012).
8. UNCTAD: *Sierra Leone Investment Policy Review* (2010).
9. World Trade Organisation: *Trade Policy Review – Sierra Leone* (2017).

## INTERNET SOURCES

1. Afesorgbor SK. & van Bergeik PAG. 'Multi -Membership and the Effectiveness of Regional Trade Agreements in Western and Southern Africa: A Comparative Study of ECOWAS and SADC' (2011) Institute of Social Science Working Paper No.520, 10 available at SSRN: <https://ssrn.com/abstract=1766522> (accessed 15 July 2021).
2. African Economic Outlook: Sierra Leone (2018) available at <https://afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/country-notes/sierraleone-country-note.pdf> (accessed 15 July 2020).
3. African Union: 'Agreement Establishing the African Continental Free Trade' available at <http://au.int/en/treaties/agreement-establishing-african-continental-free-area> (accessed 18 September 2020).

4. 'Assessment of the Socio-Economic impact of Covid-19 in Sierra Leone' (2020) 8-12 available at <https://www.greengrowthknowledge.org/research/research/assessment-socio-economic-impacts-covid-19-sierra-leone> (accessed 3 November 2021).
5. Borges M.R 'Regulation and Regulatory capture' (2017) available at <http://worldacademy.org/files/Colloquium-2017/papers/Regulation-regulatory-capture-M.Borges.pdf> (Accessed 12 September 2020).
6. Carnegie A., 'The Gospel of Wealth' by Andrew Carnegie – Steel magnate Andrew Carnegie wrote his 1889 classic on how the richest in America should give 'excess wealth' to the public' available at <https://media.carnegie.org/filer-public/Oa/e1/Oe166c5-fca3-82a7-74c0534cd8de/gospel-of-wealth-2017.pdf> (accessed 19 July 2020).
7. Common Wealth of Nations 'Rule of Law' available at <http://www.commonwealthofnations.org/commonwealth-in-action/rule-of-law-2/> (accessed 5 July 2021).
8. Dimgba N. 'Introduction to Competition law: a sin qua non to a Liberalised Economy' (2006) available at <http://academia.edu/88/22080/The-Need-and-the-Challenges-to-the-Establishment-of-a-Competition-Law-Regime-in-Nigeria> (accessed 9 September 2020).
9. 'Ease of doing business in Sierra Leone' available at <https://tradingeconomics.com/sierra-leone/ease-of-doing-business> (accessed 20 July 2020).
10. Economic Community of Western African States (ECOWAS): 'ECOWAS Regional Competition Authority Launches in The Gambia' available at <https://polity.org.za/article/ecowas-regional-competition-authority-launches-in-the-gambia-2019-05-31> (accessed 22 July 2020).
11. 'ECOWAS Launches Regional Competition Authority' available at <https://www.ecowas.int/ecowas-launches-regional-competition-authority/> (accessed 5 July 2021).
12. European Commission – 'What is Competition Policy?' Available at <https://ec.europa.eu/competition-policy/consumers/what-competition-policy-en> (accessed 22 October 2021).
13. 'European Union (EU) Environment- Sustainable Development' available at <http://ec.europa.eu/environment/sustainable-development/SDGs/index-en.htm> (accessed 21 August 2020).

14. Forna M 'Building a Genuinely Competitive and efficient Local Business Sector should be the Government of Sierra Leone's' available at <https://www.linkedin.com/pulse/building-genuinely-competitive-efficient-local-business-memuna-forna> (accessed 4 November 2021).
15. Fox EM 'Antitrust, economic development and poverty: The other path' (1991) *Harvard Institute for International Development* available at <http://unctad.org/sections/ditc-ccb/docs/ditc-ccpb003.en.pdf> (accessed 18 August 2020).
16. 'Global Competitiveness Report' 2018 available at <http://www3.forum.org/docs/GCR2018/05FullReport/TheGlobalCompetitivenessReport2018pdf> (accessed 20 July 2020).
17. 'Global Competitiveness Report 2019' available at <https://www3.weforum.org/docs/WEF-TheGlobalCompetitivenessReport2019pdf> (accessed 20 July 2020).
18. Global Compliance News 'South Africa: Competition Law Exemptions and Regulations applicable during Covid-19' available <https://www.globalcompliance.com/south-africa-competition-law-covid19-240332020/> (Accessed 15 September 2020).
19. Hulme B 'The Goals of European Competition Law: Utilitarianism and Deontology' *The Student Journal of Law* available at <https://sites.google.com/site/349924e64e68f035/ssue-6/the-goal-of-european-competition-law-utilitarianism-and-deontology> (accessed 9 October 2020).
20. Information available online at <http://www.thedtic.gov.za/know-the-dtic/agencies/> (accessed 2 October 2021).
21. International Competition Network – 'Advocacy Working Group Benefits Project: Explaining the benefits of competition to Business' (2015) 14; available at <https://centrocedec.wordpress.com/2015/07/Explaining-benefits-to-businesses-repor.pdf> (accessed 3 November 2020).
22. Jenny F, 'The institutional design of Competition Authorities: Debates and Trends' (2016) 1. Available at <https://www.europarl.europa.eu> (accessed 19 August 2021).
23. Lee C 'The Objectives of Competition law' (2015) available at <https://researchgate.net/publication/307634289-The-Objectives-of-Competition-Law> (accessed 8 September 2020).

24. Marcos F ‘Do Developing Countries Need Competition Law and Policy?’ (2006) available at SSRN: <https://ssrn.com/abstract=930562> or <https://dx.doi.org/10.2139/ssrn.930562> (7 (accessed 15 August 2020 ).
25. Ndomo A, ‘Regional Economic Communities in Africa: A progress review’ available at <https://www.tralac.org/images/news/Reports/Regional/Regional-Economic-Communities-in-Africa-A-Progress-Overview-Atieno-Ndomo> (accessed 13 July 2021).
26. OECD ‘Independence of competition authorities – from design to practice’ (2016) 15-16 Unclassified DAF/COMP/GF available at [http://one.oecd.org/document/DAF/COMP/GF\(2016\)5/en/pdf](http://one.oecd.org/document/DAF/COMP/GF(2016)5/en/pdf) (accessed 2 November 2021).
27. ‘Philippine Competition Commission on anti-competitive agreements’ available at <https://www.phcc.gov.ph/wp-content/uploads/2017/04/PCC-MODULE-2-1> (accessed 1 November 2021).
28. ‘President Bio’s Speech on the Opening of the fifth Parliament of the Second Republic of Sierra Leone’ available at <http://sierraleone.org/speeches/Bio-051018.pf> (accessed 6 June 2020).
29. ‘Request an Advisory Opinion’ available at <https://www.compcom.co.za/request-an-advisory-opinion/> (accessed 22 August 2021).
30. ‘Sierra Leone Presentation on the Challenges in the Formulation and Implementation of National Intellectual Property Policies and Strategies’ available at <https://wipo.int/endocs/mdocs/aspac/en/wipo-inn-tyo-12/wipo-inn-type-12-ref-+3sierraleone.pdf> (accessed on 19 October 2020).
31. Sonnenbergs EN ‘Competition law in the developing world: A fish out of water?’ (2011) *Fifth Annual Competition Law, Economics and Policy Conference 27*; available at <http://compcom.co.za/wp-content/uploads/2014/09/FINAL-PAPER-2011.pdf> (accessed 2 November 2020).
32. Stiglitz J ‘Competing over Competition Policy’ available <http://www.project-syndicat.org/commentary/competing-over-competition-policy> (accessed 28 September 2020).



33. Stiftung, H.B. ‘what are the main challenges facing the European Union in 2017?’ available at <https://eu.boell.org> (accessed 17 October 2021).
34. ‘Ten years of enforcement by the South African Competition Authorities: Unleashing Rivalry’ 1999-2009 available at <http://www.comtrib.co.za/content/Documents/Info%20library/Reports/unleashing-rivalry-ten-years-of-enforcement-by-sa-competition-authorities.pdf> (accessed 4 September 2020).
35. Tralac: ‘African Continental Free Trade Area’ available at <https://tralac.org/documents/resources/flags/2377-african-continental-free-trade-area-flags-june-2018-update/file.html> (accessed 21 July 2020); Tralac: Status of AfCFTA Ratification available at <https://tralac.org/resources/infographic/13795-status-of-afcfta-ratification.htm> (accessed 21 July 2020).
36. ‘Sierra Leone Extractive Industry Transparency Initiative (SLEITI)’ available at <http://eiti.org/sierra-leone> (accessed 17 August 2020)
37. ‘The action by NATCOM, Africell & Orange is depriving the customers of their right to communicate-QCELL/’ available at <https://snradio.net/the-the-action-by-natcom-africell-orange-is-depriving-the-customers-of-their-right-to-communicate-qcell/> (accessed 5 June 2020).
38. ‘The Competition Commission of South Africa Annual Report’ (2009)<sup>3</sup> available at <http://www.compcom.co.za/assets/uploads/AttachedFiles/MDocuments/10year.pdf> (accessed 4 September 2020).
39. The Competition Commission of South Africa ‘Exemptions’ available at <https://compcom.co.za/exemptions/> (accessed 26 November 2020).
40. ‘The lockdown saw a spike in food prices across South Africa-and some groceries are still more expensive than before’ available at <https://businesstech.co.za/news/finance/435933/the-lockdown-saw-a-hike-in-food-prices-across-south-africa-and-some-groceries> (accessed 14 August 2021).
41. Welcome to the ECOWAS Regional Competition Authority available at <https://www.arcc-erca.org> (accessed 5<sup>th</sup> July 2021).

42. World Bank Group: 'Sierra Leone Economic Update' (2018) available at <https://openknowledge.worldbank.org/bitstream/handle/10986/30032/127049-WP-Public-Sierraleoneeconomicupdatev.pdf?sequence=1> (accessed 15 July 2020).
43. 'World Bank Doing Business Report 2020' available at <https://doingbusiness.org/content/dam/doingBusiness/country/s/sierra-leone/SLE.pdf> (accessed 19 July 2020).
44. World Trade Organisation: 'Member Information' available at <http://wto.org/english/thewto-e/countries-e/sierra-leone-e.htm> (accessed 20 July 2020).

## NEWS PAPERS

1. 'Africell buys Tigo Awoko News Paper' 30 July 2009 available at <https://www.awokonewspaper.sl/africell-buys-tigo> (accessed 1 November 2021).
2. Milton B. 'Sierra Leone News: ECOWAS court rules-former VP sacking was illegal' Awoko publications' 5 December 2017 available at <https://awokonewspaper.sl/sierra-leone-news-ecowas-court-rules-former-vp-sacking-was-illegal/> (accessed 30 June 2021).

