

COMPETITION POLICY OPTIONS FOR THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA).



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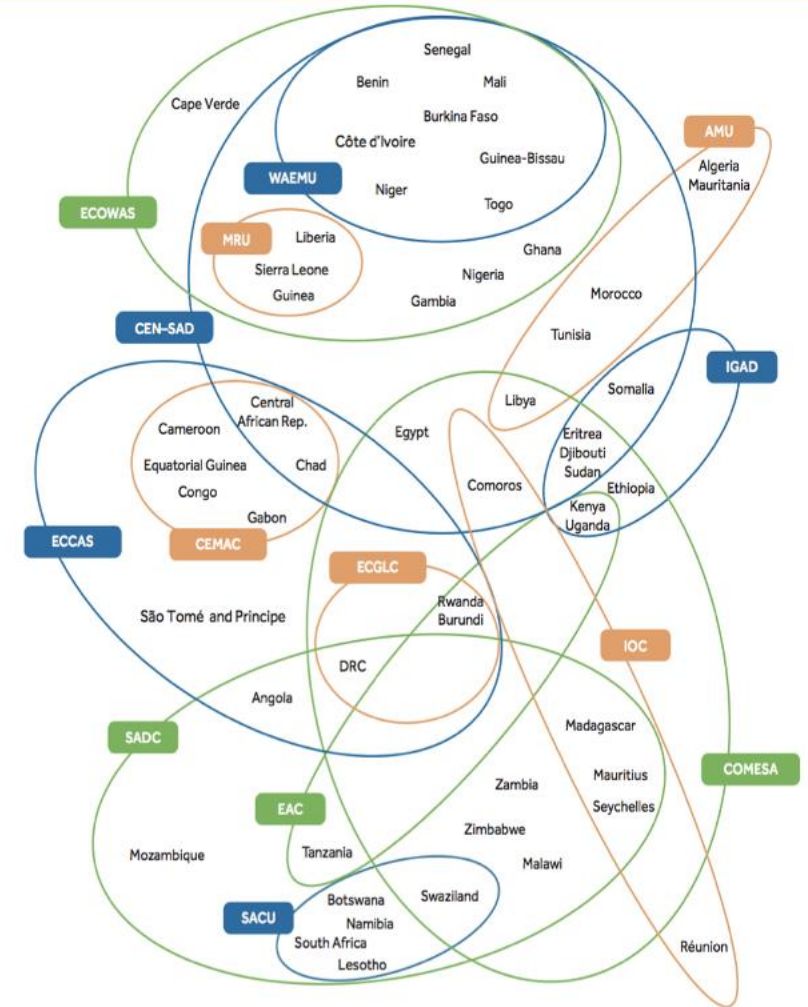
COMPETITION POLICY DEBATES UNDER THE AFCFTA

- SHOULD WE REGULATE COMPETITION?
- WHICH FRAMEWORK SHOULD WE ADOPT?
- DOES COMPETITION REGULATION IMPEDE TRADE?
- WHICH REGIONAL COMPETITION FRAMEWORK SHOULD WE ADOPT?

WHY IS COMPETITION POLICY A CONCERN IN THE AfCFTA?



- 54/55 African countries.
- Regional Economic Communities:
 - SADC
 - COMESA
 - EAC
 - ECOWAS
 - ECCAS
 - AMU...



Source: ACBF (2016)

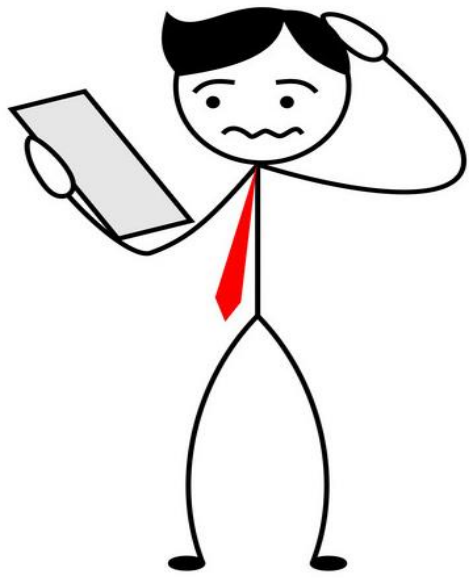
THEORIES OF COMPETITION REGULATION

FREE UNREGULATED MARKET

- **CLASSICAL THEORY:** Individuals by pursuing their self-interest will increase production and lower prices thereby benefiting the whole community. Let the invisible hand guide the market (Smith, 1776).
- **NEO-CLASSICAL THEORY:** Choices of Suppliers and Consumers should not be restrained. The market will be driven by demand and supply.

FREE REGULATED MARKET

- **HARVARD THEORY:** The aim of competition law should be to avoid concentrated markets and high entry barriers .
- **CHICAGO THEORY:** Markets can take care of themselves (neo-classical theory) but competition law should be protect consumer welfare.
- **POST-CHICAGO THEORY (NEW INDUSTRIAL ECONOMICS):** Government should identify and remedy anti-competitive practices.



COMPETITION REGULATORY FRAMEWORK

‘Exporting antitrust ...is like giving a silk tie to a starving man. It is superfluous; a starving man has much more immediate needs. And if the tie is knotted too tightly he won’t be able to eat what little there is available to him.’ (Godek, 1992 at p.21)

NATIONAL LAW: Historically competition law was national concern that arose in advanced economy countries.

MULTILATERAL FRAMEWOK: Efforts to have competition policy under the WTO have so far been unsuccessful.

REGIONAL FRAMEWORK: Regional competition regimes emerged as a result of free trade, open borders, technology e.g COMESA, SADC, EAC.

RELATIONSHIP BETWEEN TRADE AND COMPETITION LAW

- It's complicated (Spier, 1997)
- Not necessarily stable (Weiss, 1999)
- Uneasy (Kelly, 2007)
- Frenemies (Nkomo and Van Wyk , 2014)

Examples:

- Anti-dumping(trade) vs. Low Prices for consumers(competition law).
- Safeguards(trade) vs. Consumer freedom of choice of the supplier(competition)

Focus on convergence

- Trade liberalisation and Restrictive trade practices (anti-competitive practices)

Uneasy



un stable

it's
Complicated

Poultry farmers suffer ‘another devastating blow’

“Chicken dumping has made the middle men rich, but it has not aided the poor. And now profits for importers will keep rolling in at the cost of South African jobs.” A recent government decision on chicken imports is not sitting well with local producers



by **Duncan Masiwa** — 4th August 2022

[https://www.businesslive.co.za › national › 2022-08-01-p...](https://www.businesslive.co.za/national/2022-08-01-p...)

Patel not willing to play chicken with surging food prices

1 Aug 2022 — Trade, industry & competition minister Ebrahim Patel has suspended antidumping duties on **chicken** imported from five countries for the next ...

The chickens are out for Patel – Ivo Vegter

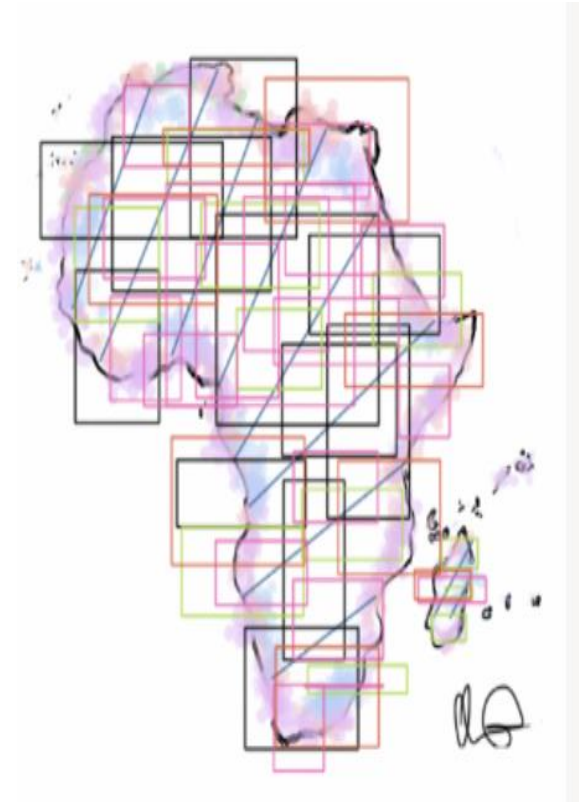
10th August 2022 by Sandra Laurence

... Ivo Vegter (South African Journalist pro free market) argues that the promise of low prices is always good for consumers, which makes so-called ‘dumping’ a good thing. The economy does not exist for the benefit of producers, he says.



HARMONISATION OF LAWS

- **Harmonisation of laws:** Creating common standards across the AfCFTA.
- Harmonising national competition laws through bottom-up convergence.
- Bilateral type of harmonisation, based on shared principles.
- Does not take advantage of the already existings RECs. Article 5, Preservation of the *Acquis* (Building on what exists in the REC).



COOPERATION MODEL

- Collaboration between competition authorities for mutual assistance and reciprocity in enforcing their competition laws.
- Cooperation even for those without competition laws, e.g offering them technical assistance so that they develop their own competition laws.
- Informal cooperation: unofficial, friendly, voluntary and non-binding form of collaboration between competition agencies e.g SADC .

COOPERATION MODEL

ADVANTAGES

- Easily achievable model at a regional level. Preservation of the *Acquis*.
- Preserves the *acquis* (Formal and Informal cooperation in the existings RECs).
- Hint of cooperation approach in the Agreement establishing the AfCFTA.

CHALLENGES

- Absence of competition laws in some countries, different levels of economic development/ lack of capacity and resources for some.
- Different priorities of competition authorities .
- voluntary nature/ lack of enforcement.

SUPRANATIONAL MODEL

- Strongest option is full integration or unification of competition law.
- Creation of comprehensive continental competition policy or code, as well as a supranational enforcement body to deal with cross-border anti-competitive conduct. E.g EU WAEMU, COMESA and EAC.
- Supranational regional competition regulatory framework has great potential in resolving some of the most serious issues that hinder competition law enforcement in African developing countries.

SUPRANATIONAL MODEL

ADVANTAGES

- Resolve challenges of overlapping regional integration (spaghetti bowl).
- Small jurisdictions can benefit from joint enforcement as well as pooled resources and capabilities.
- Increase transparency, certainty, predictability and compatibility.
- Strengthen integration and create a formal cooperation system.

CHALLENGES

- Preserving the status of RECs or building on the progress?
- Fear of loss of sovereignty (Competition a national issue).
- Political Will: political members should be willing to obey regional competition rules.

MIXED APPROACH



- Competition protocol, hints a written code.
- Harmonisation of minimum requirement competition principles in RECs and their members.
- Codification and widespread adoption of regional competition words, conventions, and practices, as well as a consistent interpretation, application, and enforcement of principles.
- Members should take advantage of the progress made in establishing institutional framework such as the Dispute Settlement Body and the Appellate Body.
- Piecemeal approach to full integration.

CONCLUSION

- Trade and competition law have an intimate relationship despite their differences.
- In the absence of an effective competition regime in AfCFTA, the advantages from liberalised trade may be negated by private barriers that discourage or limit access to foreign products and services.
- The AfCFTA can establish a semi-supranational approach where the competition protocol provides rules for RECs to enforce minimum requirement of competition principles and RECs to have harmonised laws in respect to these minimum requirements.
- Based on the current status of RECs in the AfCFTA; the mixed approach which is a combination of the cooperation and supranational models would be ideal.