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Introduction

- Globalisation, the increasing significance of emerging economies, the borderless nature of the growing digital economy, and the proliferation of competition regimes have caused a significant increase in the complexity of cross border competition law enforcement cooperation.
- This results in a greater need to:
 - Ensure inconsistencies and duplication of efforts among governments enforcing their competition laws.
 - Help multi national businesses comply cost effectively with the competition regimes of multiple jurisdictions
 - Improve the techniques and tools of competition authorities through cooperation in Competition law enforcement
- Regional cooperation is key to increasing competition in a globalised world.
- Integrated/harmonized treatment of trans-boundary issues e.g. regulatory frameworks and policies and other cross border issues has become widely accepted.

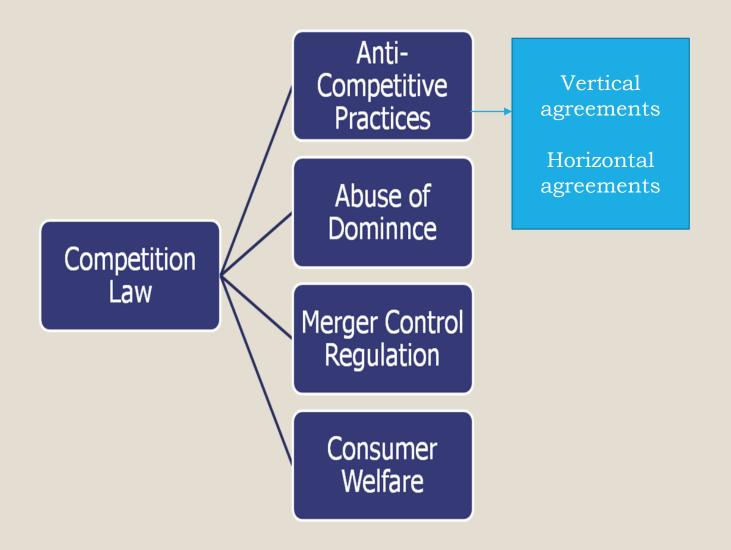
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- For developing countries economic integration has often been structural in nature- e.g. development of new industries through cross-border coordination to exploit the advantages of economies of scale with larger home markets.
- However, regional integration does not only mean removal of tariffs and borders but entails a deeper integration
- Currently there are about 10 or more RECs in Africa, each country belonging to one / two RECs
- Competition has appeared to be one of the pillars in most RECs

Competition Law Enforcement in the RECs

- Treaties establishing these RECs have provisions acknowledging the importance and need for fair and efficient markets
- For example, COMESA have proceeded to establish dedicated offices specifically to deal with competition matters in the economic regional groupings.
- SADC under Article 25 of the SADC Protocol on trade and the EAC through the establishment of the East African Community Competition Authority (EACCA) have equally made progress in the institutionalisation of competition principles in their respective economic groupings.
- Informal networks such as the African Competition Forum (ACF) have equally sprung up in promotion of competition in the face of increasing regionalisation and the integration of markets.

Scope of Competition Law and Regulations



Regional Cooperation

- Although there has been progress in regional cooperation and integration, more is needed to better link national with regional priorities so that countries may fully benefit from each other's strengths and overcome mutual problems through:
- a) Formal mechanisms of information sharing comprising the signing of MoUs, agreements to agree to cooperate and work together to achieve a common goal.
- a) Informal means of cooperation, such as direct contact with agencies' international relations departments- have proven to be more useful in building mutual trust among the officers of relating competition authorities.
- E.g, SADC Members share the same political and economic agenda and hence share non-confidential information in the same manner as the EU and the Asian.

Case of SADC Regional Economic Cooperation

• SADC recognised in its Declaration that "competition and consumer protection laws are national but the relevant markets can extend beyond national boundaries."

Further, "there is a need for increased regional cooperation in addressing cross-border anti-competitive practices." and also that there is a need to formalise a system of cooperation between national regimes that can harness the collective efforts of relevant national authorities and add value to national enforcement efforts in the face of problems affecting more than one country."

Progress made on SADC Competition Integration in Assessing Mergers

- SADC has made significant progress from the interaction and voluntary cooperation among the agencies, which include technical assistance and exchange of information.
- SADC member states in 2016 signed a Memorandum of Understanding (MoU) to cooperate on competition matters
- This is premised on the SADC declaration which provided for cooperation between authorities including provisions on the sharing of information and establishment of competition laws in countries that did not have relevant legislation.
- The SADC Committee on competition formulated the **SADC Cartel Working Group** and **SADC Mergers Working Group**.
 - The SADC Merger Working Group effectively contributes in the assessment of mergers through sharing of non-confidential information among competition authorities.

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- The establishment of the SADC Mergers Working Group has led competition authorities to share information on legal frameworks, investigative processes, timetables, procedures and confidentiality rules.
- The establishment of this working group has the likelihood of increasing transparency as a result minimise uncertainty and increase predictability in merger review,
- It encourages the member agencies to notify mergers in different SADC countries
- However, bottlenecks are inevitable as agencies enforcing competition law may have differences in the very laws they enforce.
 - E.g, the merger thresholds and notification fees are not uniform, some jurisdictions like Zambia include public interest in their merger assessments while others don't.
- The merger working group hopes to commence harmonising rules to ensure that there is simultaneous notification of transactions.

Progress made on SADC Competition Integration in Assessing Cartels

- Cartels do not respect national borders and may increasingly cover several jurisdictions, and may even be organised on a global scale.
- o Cartel conduct by companies is one of the most harmful forms of anticompetitive conduct
- e.g. ACF and the World Bank study showed that the retail prices of ten key consumer goods (including bread, milk, eggs, potatoes and frozen chicken) are on average 24% higher in African cities than in other economies around the world.
- SADC Cartels Cooperation Framework was developed to promote greater regional cooperation and coordination in cartel investigation processes and improve the quality and efficiency of cartel investigations
- The SADC cartels working group was formulated in 2015 to promote greater regional cooperation and coordination in cartel investigation processes to:
 - To enhance the efficiency of cartel investigation;
 - and, to increase transparency and understanding in agency practice.

SADC Cartels Working Group

- The two tier SADC cartels working group's extent of cooperation:
- Less extensive cooperation- e.g keeping each other informed on the stages of the investigation or having general discussions on substantive issues and more extensive cooperation.
- *More extensive cooperation* e.g detailed discussions on substantive issues including non-confidential evidence gathered; coordination in conducting investigations and sharing of information on the basis of waivers of confidentiality where applicable.

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Cartels Working Group established two sub-groups focussing on;

>The Legal framework sub group

- purposed to identify areas of divergence and convergence in the laws and to determine where the laws are restrictive in terms of the sharing of information.
- identifying the extent to which each jurisdiction determines cartel enforcement, the scope of its prohibition, whether enforcement is administrative, civil or criminal.

>Investigative Techniques sub group

o parties have agreed to engage in joint dawn raids, joint research programmes, joint investigations, and exchange programmes as well as sharing cases being investigated

Benefits of Inter agency cooperation

- o Interagency cooperation on cartel investigations can benefit both authorities by:
 - helping to promote consistent outcomes within the context of national laws and increase cartel investigative efficiency
 - o reducing unnecessary duplication of work, delays and burdens for agencies and firms.
 - Reduce gaps in information available to agencies and lead to more informed agency decision making and enhanced analytical robustness;
 - promote convergence, both in the analysis of specific cases as well as more generally, in relation to principles applicable to all cartel investigation;
 - increase familiarity between agencies and mutual understanding of their cartel investigation processes

Challenges Faced by SADC

- Exchange of information between agencies, while a key aspect of cooperation, is often restricted by issues relating to the protection of confidential information
- The divergence in substantive provisions of the national competition laws together with legal restrictions to the release of confidential information and legal hindrances to the admissibility of evidence obtained through information exchanged has provided a further challenge for effective enforcement cooperation amongst agencies.
- Agencies have discretion to determine the extent of cooperation throughout the process
- Differences in procedural rules, the scope or the timing of investigations or agency resources
- Competition approaches of each state vary according to differences in policy as well as differences in their respective legal systems
- There are at present very few fully functioning leniency programmes in place in the region, and this has proved to be a challenge in dealing particularly with cartel cases

Conclusion

- In order to succeed, regional integration programmes require inclusive participation and implementation by its members
- The pace at which these programs particularly competition cooperation is realised depends largely on the development and the state of respective in-country laws, the maturity of the respective competition authorities and the cultivated relationships.
- The need for an effective regime for assessing regional mergers and prosecution of cross border cartels cannot be over emphasised especially with the growing global economy and the increase in the number of cross border issues that require collective enforcement of Competition laws.

The End Thank you for your attention and God richly bless you ALL!!!

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