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*Swaziland**

The tiny mountain kingdom of Swaziland is the last absolute monarchy in sub-Saharan Africa. Although it had its autonomy guaranteed by the British in the late 19th century, its independence was granted in 1968. Recently student and labour unrest during the 1990s have pressured the monarchy (one of the oldest on the continent) to grudgingly allow political reform and greater democracy.

PROFILE	
Population:	1.1 million***
GDP (Current US$):	1.8 billion***
Per Capita Income: (Current US$)	1,350 (Atlas method)*** 4,550 (at PPP.)**
Surface Area:	17,360 sq. km
Life Expectancy:	35.7 years**
Literacy (%):	80.9 (of ages 15 and above)**
HDI Rank:	137***

Sources:
- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002
(***) For the year 2003

Economy

Swaziland's small landlocked economy is export-oriented, with exports amounting to 70 percent of GDP where subsistence agriculture occupies more than 80 percent of the population. In recent years, mining has declined in importance where diamond mines were shut down because of the depletion and high-grade iron ore deposits were depleted by 1978 whereas health concerns have cut world demand for asbestos.

Competition Law and Institutions

Swaziland is a signatory to the Treaty establishing the COMESA. Article 55 of this treaty requires signatory states to create competitive market conditions within the common market. With the assistance of the Zambian Competition Commission (ZCC), Swaziland has a draft Competition Bill. The Bill is awaiting Parliamentary assent. It provides for the following:

- encouraging competition in the economy by controlling anticompetitive trade practices, M&As, monopolies and concentration of economic power and UTPs; promote economic development and growth and protect consumer welfare;
- providing an appropriate institutional and operational mechanism for its administration, including the Fair Trading Act; and
- providing for the establishment of a Competition Commission.

This Bill was a natural response from pressure from the four regionally driven competition related provisions to which the kingdom of Swaziland belongs. The first one being the SACU Agreement to which the Kingdom of Swaziland is party. Article 40 states that there shall be competition policies in each member state and that member states shall cooperate with each other with respect to the enforcement of competition laws and regulations. Article 41 of the same treaty reflects on UTPs where it gives power to the Council of Ministers to advise the Customs Union Commission to develop policies and instruments to address unfair trade practices between member states.

The second competition related regional agreement is contained in Article 55 of the COMESA treaty, which provides for a regional policy on competition and is used as a starting point for developing a regional competition policy to which the kingdom of Swaziland is also a signatory. This article provides for fair competition within the region by prohibiting 'any agreement between undertakings or concerted practice, which has as its objective, or effects the prevention, restriction or distortion of competition within the common market'.

The third is the provision in Article 25 of the SADC Trade Protocol (whose implementation started in 2001), which

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Box 55.1: Efforts at Introducing Competition Regime through SACU

The Ministry of Trade and Industry, Cooperatives and Marketing of Lesotho and Ministry of Finance in Swaziland requested UNCTAD, on behalf of the SACU members, to organise a consultative workshop to review the modalities for preparing an annex agreement on RBPs. The aim of the workshop was to identify the main cross-border trade and investment anticompetitive practices affecting the SACU intra-trade and evaluate approaches that could be adopted by SACU in addressing them in an annex agreement on RBPs to the main SACU Agreement of 1994.

The workshop was held in Mbabane, Swaziland, on March 11-12, 2004, back to back with the first round of SACU Technical Liaison Committee meetings. It provided an opportunity for the SACU member states to exchange ideas and views with the resource persons from the region and international organisations to formulate a coherent approach that would redress RBPs and deepen integration among SACU members.

The meeting also reviewed UNCTAD support to Swaziland and Lesotho in preparing national competition laws and formulating a detailed terms of reference for the objectives, scope and principles of a study that could form the basis for the annex agreement on RBPs as well as a work plan for its implementation. UNCTAD was requested to prepare the first draft of the report by August 2004 for consideration by SACU Technical Liaison Committee meetings to be held in Lesotho and Namibia in the summer of 2004.

Source: UNCTAD, Competition Policy for Development: A Report On UNCTAD's Capacity Building And Technical Assistance Programme, New York And Geneva, 2004

seeks to implement measures within the community that prohibit unfair business practices and promote competition. Swaziland is a member of SADC.

The fourth is contained in the Cotonou Agreement to which the country subscribes. Article 45 of the Cotonou Agreement deals with competition. The text reads:

1. The Parties agree that the introduction and implementation of effective and sound competition policies and rules are of crucial importance in order to improve and secure an investment friendly climate, a sustainable industrialisation process and transparency in the access to markets.
2. To ensure the elimination of distortions to sound competition and with due consideration to the different levels of development and economic needs of each African, Caribbean and Pacific (ACP) country, they undertake to implement national or regional rules and policies including the control and under certain conditions the prohibition of agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition. The Parties further agree to prohibit the abuse by one or more undertakings of a dominant position in the common market of the community or in the territory of ACP States.
3. The Parties also agree to reinforce cooperation in this area with a view to formulating and supporting effective competition policies with the appropriate national competition agencies that progressively ensure the efficient enforcement of the competition rules by both private and state enterprises.

Institutional Capacity

Generally speaking there is a minimal institutional capacity and much of the economy is under state control where local firms that are uncompetitive enjoy the benefit of a protectionist environment. Thus, the various sectors of the economy are dominated by state owned institutions.

The current Companies Act is 92 years old and is undergoing review.

Having no separate agency, the country's competition related the Commerce Ministry handles issues. However, due to unsatisfactory levels of performance and productivity of the public sector to deliver services a public sector management programme, (PSMP-1), was launched in 1995. In recognition of the fact that very little progress was made, the programme was redesigned and re-launched in 1999, to bring about an effective and responsive civil service, by addressing the following issues: A lack of clear and appropriate ministerial missions, objectives, strategies, structures and staffing levels, as well as a missing clear definition of and distinction between the roles of public sector, private sector and civil society.

Sectoral Regulation

Telecommunications Sector

This sector has neither a telecommunications regulator nor a telecommunications policy. This has prompted the Government to begin the process of reform aimed at adopting a draft policy and draft legislation, which includes: (1) establishment of a sector regulator, (2) privatisation of Swaziland Posts & Telecommunications Corporation (SPTC), and (3) phased liberalisation of the sector.

The draft telecommunications bill that was reviewed by all stakeholders by April 2003, was scheduled to be presented before the Parliament by June 2004. It includes a provision for a Communications Policy Unit in the Ministry of Tourism, Environment & Communications, together with an independent sector regulator. In considering both the policy unit and the regulator, it is recognised by all concerned that they will be small units. Indeed, positive consideration has been given to the communications regulator being the forerunner of a multi-sector regulatory body, able to utilise the scarce regulatory skills across a number of utility sectors.

Energy Sector

Swaziland imports the majority of its energy needs. A draft energy policy has been presented before the cabinet. One of the objectives of this Energy Policy was to gather data on wind speed and direction and also solar radiation. Now the country has also embarked on establishing the Energy Regulatory Authority. The Electricity Bill that is also with cabinet includes renewable energy to ensure that the country promotes not just electricity but also consider renewable energy issues and all possible means by which electricity can be generated.

The Financial Sector

The Swaziland Stock Exchange, which was established in July 1990, has a Market Regulator called the Capital Markets Development Unit (CMDU). There is a handful of listed public companies, as well as some listed government stock options, listed debentures, government guaranteed stock and non-trading mutual funds. Stockbrokers on the Exchange are licensed by the Central Bank of Swaziland and there is no regulation regarding the foreign ownership of brokers. The Government is also expected to accelerate the privatisation of parastatals, which could then be listed on the stock exchange to make them more competitive.

The CMDU undertook a critical self-examination of current legislative practice, which demonstrated that the country had yet to fully implement minimum international standards in the area of securities regulation. Thus, there is optimism that the exchange will be given a boost by parliament's passage of the Securities Bill. The law, when eventually passed, will lay the enabling environment for the powers and responsibilities of the regulator, self regulation by securities exchanges, enforcement of securities legislation, co-operation with other regulators, regulation of issuers of securities, collective investment schemes, market intermediaries and the secondary market.

The Central Bank of Swaziland acts as both a regulator and supervisor of financial institutions in Swaziland. In an endeavour to improve its supervisory role, the Central Bank effected some amendments to the Central Bank Order and the Financial Institutions (Consolidation) Order, 1975 and these were presented to the Ministry of Finance awaiting promulgation.

Anticompetitive Business Practices

Box 55.2: Banking and Public Dissatisfaction

Public dissatisfaction with regard to the quality of services offered continued to characterise the banking system during 2000. In particular, the Central Bank received complaints about the status of cheque accounts after the banks had issued a press statement informing the public that 'cash cheques' would no longer be honoured. The Bank has noted, with concern, that while banks have ensured adherence to prudential requirements as laid down in the Financial Institutions (Consolidation) Order 1975, they had not done enough in fulfilling their responsibility of offering efficient and competitive services to the public.

Source: The Swaziland Central Bank's Monetary Policy 2001

Consumer Protection

Although the country has sector specific rules scattered throughout the various pieces of legislation for consumer protection especially in the food, health and environmental legislation the country does not have a consumer policy or law. For advocacy purpose, the country now has a civil society group called the National Consumer Association of Swaziland (NCAS). The association has been using media pressure to request Parliamentarians to speed up the process for the enactment of the Competition Bill into a law.

Box 55.3: Monopoly in the Telecommunications Sector

The incumbent, Government-owned, fixed-line monopoly operator, Swaziland Posts & Telecommunications Corporation (SPTC) has had a cosmetic overhaul. The incumbent operator reports approximately 46,200 fixed-lines. A monopoly cellular-provider, MTN Swaziland, has been established and provides high-cost services to 88,000 customers, with a 15 years exclusivity clause in its license. SPTC owns a 51 percent share of MTN.

Although a number of ISPs exist they suffer from narrow bandwidth and a reliance of SPTC to provide them with access to the net, through ISP hubs based outside the country. Postal service is delivered under the same SPTC corporation with telecommunications and reports a significant decline in mail sent and received over the last five-years.

Despite its many advantages (e.g., monopoly service provision and government support), however, SPTC appears to be struggling. SPTC is already heavily in debt with roughly 2/3^{rds} of its capitalisation in debt and diminishing cash from operations.

Source: Kingdom of Swaziland: Review of Communications Policy & Regulatory Activities & Proposals for Resourcing & Capacity-Building; Internews Network Inc, April 2004.

Box 55.4: National Consumer Asscn Wants Competition Bill Process Sped Up

The National Consumer Association of Swaziland (NCAS) requested Parliamentarians to speed up the process for the enactment of the Competition Bill into a Law.

In a statement, the Chairman of NCAS, Bongani Mdluli mentioned that the need for the Competition Law in the country is long overdue. The pressure on Government from NCAS follows a Ministerial Round-table on the link between the Competition Policy and Development held in Cairo, Egypt whereby members of the COMESA were urged for the formulation of competition regulations in their respective countries.

However, he noted that Swaziland together with Uganda and Egypt are now the only countries that have still not passed this Bill into a law, despite the fact that a number of other COMESA member states like Kenya, Malawi, Mauritius, Zambia and Zimbabwe have long incorporated the law. 'The association believes that once passed into a law, it will be a key instrument for promoting fair competition and protecting consumers in the country'.

Source: Business Times of Swaziland 02.12.04

Concluding Observations and Future Scenario

The passage into law of the competition bill, which is presently before the Parliament will provide direction to competition issues in Africa's last absolute mountain kingdom of Swaziland. This will put into place the creation of the Competition Commission.

The Government, however, has a long way to go in freeing market prices. The IMF reports that administered prices account for approximately 16 percent of the consumer price index. The major services industries like electricity, telecommunications, railways, and water services are controlled by the state and government makes transfers to these parastatals to control the prices.