



Burkina Faso*

– Adolphe Coulibaly[†]

Burkina Faso is situated in the heart of West Africa, surrounded by six states, namely, Ivory Coast, Ghana, Benin, Niger, Mali and Togo. From a French colony, it acquired independence on August 05, 1960 under the name Haute Volta (Upper Volta), which was later changed into Burkina Faso. The official language is French. It has an area of 274,000 Sq. Km with a population of more than twelve (12) million inhabitants. Its capital is Ouagadougou.

Economy

Classified among the poorest countries of the world, its adult literacy rate is less than 25 percent and it is at the 173rd place of the 175 nations in the UN human development index. Burkina Faso is one of the eight member-states of the WAEMU (*Union Economique et Monétaire Ouest Africaine – UEMOA*). Its economy is mainly based on agriculture and cattle rearing. Until the advent of economic liberalisation, Burkina Faso's economy was dominated by price regulation and control.

As the other states of the UEMOA, since 1991, Burkina Faso has entered the process of liberalisation of the economy, through important reforms in favour of a market economy and free competition. This evolution has been realised at the national and community levels.

Competition Evolution and Environment

A. National Level

Burkina Faso has progressively brought the liberalisation of its economy, in the fields of commerce and prices, in particular. It has also brought in privatisation, the setting up of a competition regime and the training of agents responsible for the realisation of the competition law and policy.

1) Liberalisation of Commerce and Prices.

This has involved the adoption of the following measures:

- elimination of restriction on quantity at import level;
- elimination of NTBs;

PROFILE	
Population:	12.4 million ***
GDP (Current US\$):	4.8 billion***
Per Capita Income: (Current US\$)	360 (Atlas method)*** 1174 (PPP)
Surface Area:	274.0 thousand sq. km***
Life Expectancy:	47.5 years***
Literacy (%):	12.8*** (of ages 15 and above)
HDI Rank:	175
<i>Sources:</i>	
- World Development Indicators Database, World Bank, 2005	
- Human Development Report Statistics, UNDP, 2004	
(*** For the year 2003)	

- liberalisation and diversification of the distribution networks;
- liberalisation of prices and putting an end to price control; and
- facilitation of import procedures and formalities and the setting up one-stop-shops for administrative formalities with respect to the creation of enterprises, trade and investment.

2) Privatisation

The privatisation process consisted of the progressive disengagement of the State from enterprises in favour of the private sector. At present, of the 88 State companies, more than 30 have been privatised.

3) Setting up of a Competition Regime

The liberalisation of the economy has obviously brought about the installation of a market economy, with competition as a corollary. Hence, a national competition law has been adopted. In fact, Burkina Faso has evolved and adopted a competition law with a broad application margin. It is known as Law No. 15/94/ADP on the

* Original paper submitted in March 2006

organisation of competition in Burkina Faso. It essentially covers price liberalisation and regulations relevant to competition, anticompetitive practices and relevant sanctions.

The national competition framework is derived from this law. This law provides for the setting up of the National Commission on Competition and Consumption (*Commission Nationale de la Concurrence et de la Consommation*, CNCC), an autonomous body responsible for the competition regulation in Burkina Faso.

B) Community Level

Since July 01, 1996, crude and handicraft products circulate freely in the UEMOA territory. A plan for the harmonisation of internal taxation has been evolved and established since 1998. Since January 01, 2000, industrial products are exempted from duties and entrance taxes. On January 01, 2000, the external tariff came into application. In May 2002, the community competition legislation was adopted. This legislation was implemented from January 01, 2003.

Competition Law

1) The National Competition Law

As indicated above, Burkina Faso has adopted a competition law, (No 15/84/ ADP of May 05, 1994) related to the organisation of competition in Burkina Faso. The law defines three types of violations likely to affect the normal administration of competition. They are:

- Anticompetitive practices (agreements between enterprises, abusive exploitation of a dominant position on the interior market);
- Restrictive competition practices (imposed prices, below cost-price selling, non conformity to billing regulations, non communication of price ranges and conditions of sale, refusing to sell, discriminatory practices among professionals, disorderly sales, para-commercialism, non-compliance to regulations relative to consumers' information, false advertising)
- Fraudulent practices at import and export levels, on guarantee and after-sales service, selling substandard goods and non-respect for the safety of consumers.

2) Community Competition Legislation

Community law on competition came into effect since January 01, 2003. It consists of the following:

- Regulation No. 02/2002/CM/UEMOA, to deal with anticompetitive practices inside the WAEMU;
- Regulation No. 03/2002/CM/UEMOA that relates to procedures applicable to restrictions and the abuse of a dominant position inside the WAEMU;
- Regulation No. 04/2002/CM/UEMOA dealing with State assistance inside the WAEMU and to the conditions of application of article 88 (c) of the treaty;
- Directive No. 01/2002/CM/UEMOA dealing with issues related to the transparency of financial relations, on the one hand between the member States and public

enterprises, and on the other, between the member States and international or foreign organisations; and

- Directive No. 02/2002/CM/UEMOA to promote cooperation between the Commission and the national competition structures of member states through the application of articles 88 and 90 of the UEMOA treaty.

Hence, community legislation deals with regulations relative to anticompetitive practices by firms, namely, agreements and abuse of dominant position, concentration among enterprises, public assistance likely to affect competition, financial relations between member-states. As can be seen there are two types of regulations, namely those relative to firms and those relative to States. The texts of the regulations and the directives define the structures or organisations regulating competition within the UEMOA territory, the place and role of the national structures, mechanisms, procedures and sanctions. This implies that the texts are applicable to all the states of the UEMOA. Every state must comply with them.

Institutions and its Competencies

1) National Bodies

a) The National Commission on Competition and Consumption.

Established under the law no 15/94/ADP of May 05, 1984, it is operational since August 01, 1998. It is the official national competition authority.

As such, its mission is to

- deal with issues relative to competition and consumption;
- sanction anticompetitive and restrictive practices; and
- sanction violations of the law.

It has three roles:

- an advisory role, issuing opinions and recommendations;
- an observatory role, issuing every year a report of the state of competition in Burkina Faso; and
- a repressive role, issuing injunctions and penalties.

The Commission is autonomous. It may be called upon by the administration, legally recognised consumers' associations and economic operators or professional organisations representing their interests. It also has the power to take action on its own.

b) The General Administration of Trade (DGC)

It is responsible for the application of the general policy of the Ministry, relative to trade, price and competition. Within this framework, it is responsible to enunciate legislative texts relative to trade, price and competition.

c) General Inspection of Economic Matters (IGAE)

It is responsible for:

- controlling the implementation of regulations relative to industry, commerce and the organisation of competition;

- controlling the implementation of the price policy relative to products subjected to regulation;
- setting up a national price observatory for most common consumer goods; and
- informing and sensitising consumers on the competition regulation.

The General Inspection of Economic Matters is also responsible for the enunciation of regulations relative to quality, metrology, standardisation and the control of the implementation of regulations. It has all powers to investigate and may call upon, subject to the approval of the minister, technicians of different ministries and any expert whom it may deem necessary.

d) Courts and Tribunals

Their roles are initiating procedures; pronounce penal and civil sanctions to violators of competition law. Appeals against decisions of the CNCC are made in front of the Commercial Chamber of the Appeals Court of Ouagadougou.

1. Community Level Bodies:

a) The Commission

In competition matters, the Commission's powers cover the eight member states. It acts through the Department of Fiscal Customs and Trade Policies, and in particular, through the Trade and Competition Authority. Its mission is to monitor compliance to the community law at member state level and hence:

- receive complaints directly through the national structures;
- investigate and initiate legal actions; and
- take provisional measures, decide on restrictions and fine firms found guilty of malpractices. Before taking any action, it seeks the opinion of the Competition Advisory Committee.

b) UEMOA's Court

In competition matters, UEMOA's Court has the power to take cognisance of legal actions taken by Union bodies and appeals against Commission's decisions. In such cases, the Court can annul or amend the Commission's rulings.

Limitations

A. National Level

Limitations have been identified in the following:

1) Non existence of a Competition Culture

This is due to the fact that competition law and policy are recent concepts and that these are often contradictory to the past economic system when prices were regulated.

2) Ignorance of the Texts

Most of the actual texts are not known or known to a little extent by the people. This knowledge deficit has an influence on the behaviour of the businesses, the consumer or the administration.

3) Shortcomings in the Texts Relative to Competition

The texts on competition are, in general, considered to be good. Nevertheless, some shortcomings have been noted.

4) Malfunctions at the Economy Level

They are numerous and diverse. Some examples may be given:

- a) Landlocked country: Due to country's landlocked situation, Burkina Faso is one of the UEMOA states where production costs are high. This also means that competition from imports is also limited.
- b) The dominant position on the economy of foreign firms and foreign products: In Burkina Faso, firms act in powerful cartels. In addition, the market is served by foreign companies and disciplining them is a tough proposition;
- c) Monopoly situation: A monopoly situation prevails in the market. Competition does not exist in many sectors of the economy.
- d) Assistance from the State: A number of state companies benefit from subsidies from the State to the disadvantage of private sector companies.

5) The Weakness of Implementation Bodies: Case of the CNCC:

- a) Financial difficulties: The budget given to the CNCC, though representing an important effort on the part of public authorities, does not allow it to do its work. Furthermore, procedures to obtain funds are very long, which consequently slow down the execution of annual activities;
- b) Material difficulties: On this count, the Commission is of a skeleton nature. It has no logistics; this does not facilitate investigations when called for; and
- c) Human resources: The permanent secretariat, which is the armed wing of the Commission, has meagre resources. It presently consists of a permanent secretary, three investigators, an executive secretary and one coordinator. In addition, the administrative staff and the commissioners have limited knowledge on competition issues.

B. Community Level

1) Competition Regulations and Directives

These texts were adopted in May 2002 and implemented on January 01, 2003. It should be reckoned that they are not well known to the public, not even to those who are supposed to put them in application. Although the community law is supra national, individual states would unlikely accept to let go of their sovereignty.

Moreover, the states are not at par in terms of competition. There are those who have competition law and relevant competition bodies, and those who do not have any of these. This is a handicap for the implementation of the community law.

2) The Competition and Trade Commission within the UEMOA

Responsible for the follow up and the implementation of the competition policy, the Commission lacks personnel. It has only two staff members responsible for competition issues.

Anticompetitive Practices

A. National Level

1) Agreements

In Burkina Faso, cases of agreements to fix prices or tariffs are common. For example, barristers have adopted the minimum and maximum for their fees during a general assembly. The same applies to the newspaper market where the market players agreed on a uniform price for newspapers, subscription tariffs, advertising rates and commissions paid to agencies. Highway transporters on the Ouagadougou-Bobo Dioulasso axis have agreed on fixed prices for passenger tickets.

2) Abuse of Dominant Position

Such practices are also common in Burkina Faso. For example, the unique sugar factory forces distributors to purchase a certain number of tons of granulated sugar in proportion with the amount of sugar cubes ordered. The same applies to the unique brewery. It has created a society to which it sells all its products from which distributors have to purchase. These cases have been mentioned in the annual report on the status of competition in 1999 and 2000.

B. Community Level

The community regulation only came into force in January 01 2003; the commission has, therefore, not found any violation till now, moreover the Advisory Council whose approval is required before any decision is taken, is not operational yet.

Sectoral Regulation

There are a few sectoral regulatory bodies while some more are proposed to be set up. They intervene in specific domains where they regulate competition among the different actors. For example, this is the role of the Telecommunications Regulatory Authority (ARTEL).

At the end of the reform undertaken since 1998, the sector of telecommunications is managed at three levels:

- Ministry level;
- body of regulation level; and
- operators level.

The Ministry lays down the policy, works it out and proposes the best-adapted legislation. It works out the orientations, the guiding principles and the objectives in order to ensure harmonious development of the sector.

The body of regulation, ARTEL, has the following aims:

- to apply the regulation as regards telecommunications;
- to propose the granting of the authorisations of the services and to ensure compliance of their provisions;
- to deliver approvals and authorisations, and to ensure compliance of their provisions;
- to manage and control of the spectrum of the radio electric frequencies;
- to assist in dispute resolution between the suppliers and consumers through conciliation before any arbitration or jurisdictional recourse; and
- to ensure competitive neutrality between the owners and the suppliers of services of telecommunications.

According to the Law No. 051/98/AN of December 04, 1998, it is the Ministry in charge of telecommunications which delivers the authorisations or the licences of the operators. Networks and services interconnection must be done within the framework of the provisions of the law, and the provisions of the decree which lists out the general conditions of interconnection of the networks and services of telecommunications.

Electricity Sector

Société Nationale Burkinabe d'Électricité (Sonabel) is the sole electricity supplier in Burkina Faso, with a generating capacity of 78 MW, mostly supplied by thermal power stations. There is no national transmission network and the distribution network is limited (approximately seven percent of the country has access to electricity). There is a 12 MW hydroelectric plant at Diebougou in the southwest of the country, which was officially commissioned in 1998 and was largely funded by a consortium of South African companies. Sonabel, which contributed the remaining 30 percent, will assume ownership of the hydroelectric plant approximately 14 years after it goes into service. A transmission interconnection with the Ivory Coast is planned, comprising 150 km of transmission line and a sub-station.

Government plans to withdraw from the energy sector by offering the equity of the state-owned petroleum procurement and storage company, *Société Nationale Burkinabe d'Hydrocarbures* (SONABHY) to private investors and privatising SONABEL. In addition, the Government seeks to encourage private participation in expanding electricity service to towns and rural areas that are currently without service. To this end, the Government intends to introduce regulatory, legal, and institutional reforms in order to create an environment conducive to private initiative and to the implementation of a least-cost investment programme. The government also adopted in December 1998, a law opening electricity production to private operators. However, further progress is yet to be made.

Financial Sector

The *Banque Centrale des Etats de l'Afrique de l'Ouest* (BCEAO), a central bank common to the eight members of the WEAMU, governs Burkina Faso's banking system. The financial sector was strengthened in 1997 and 1998 mainly through the following measures:

- the launching of two banks (ECOBANK and BOA) and of three financial institutions (Burkinabail, SOBFI, and SBIF): the latter three specialising in transactions on the regional financial market;
- the privatisation of the BFCI, henceforth called *Société Générale de Banque du Burkina* (SGBB);
- the re-capitalisation of the BCB (*Banque Commerciale du Burkina*); and
- the completion of the liquidation of the former BND-B.

In all, seven banks and six financial institutions were in action in mid-1999, as opposed to five banks and three financial institutions in 1996. The increase in the number of credit institutions has sharpened competition in the financial sector and brought about a narrowing of the interest spread. Moreover, the banking system strengthened gradually; in 1990, all credit institutions were abiding to the minimum capital/asset ratio set by the BCEAO.

With the aim of ensuring the continuity and smooth operation of micro-financing units, an autonomous body was set up in August 1997 within the Ministry of Economy and Finance in charge of monitoring and following up on the regulations related to savings and loans mutual institutions.

At the WAMU level, two significant developments took place:

- the start of the regional stock exchange in September 1998, jointly operated by eight WAMU member states, each of them running a local subsidiary; and
- establishment of a database on loan defaults in July 1999, which will help enhance the confidence of the public in bank deposits.

Consumer Protection

Burkina Faso is considering a comprehensive legislation on consumer protection. A law has already been drafted for this purpose. Many aspects of consumer protection are taken care by some existing laws though they are not strong enough.

Burkina Faso has three consumer organisations, namely:

- The Burkina Consumers' Association;
- The Burkina League of Consumers; and
- The Burkina Consumers' Organisation.

The objectives of all these organisations are to advocate the material and moral interest of consumers, by giving them assistance and informing them on their rights and duties. It must be underlined that these organisations do not have decision-making or sanctioning powers against economic operators. In case of violations related to competition and consumption, they can take action before the relevant authorities (CNCC, IGE, Tribunals).

Concluding Observations and Future Scenario

The effectiveness of the competition law and policy is the result of long-term practice. Competition law and policy within the UEMOA is in the process of consolidation, as a result of the action of those who are responsible for its implementation and a supportive political will. Problems that restrain or limit the implementation of the competition regime exist. Among them, are the lack of competition culture, dominant position of cartels and imported goods in the economy and the limitations of implementing bodies.

Strong action needs to be taken at the national as well as at the community levels. These are:

- the training of the staff responsible for the implementation of competition law and policy;
- sensitisation of the public on competition issues;
- enlarging the staff of competition bodies;
- allowing total autonomy to regulatory bodies; and
- states should let go of their sovereignty in favour of that of the UEMOA Commission.

[†] *Adolphe Coulibaly* is presently an advisor for Economic Affairs. Besides, he was an instructor to the National Commission on Competition and Consumer Issues since 1998 and regional inspector of Economic Affairs in West Bobo as well as a member of the UEMOA Consultative Committee. He has studied at the National School of Administration and Law; Higher School of Economic Sciences (Ouagadougou University); and National School University of Technology (Dakar).