



– Gebremedhine Birega Dagaga<sup>†</sup>, Abebe Asamere Endale<sup>††</sup> and Kibre Moges<sup>†††</sup>

Ethiopia<sup>1</sup> is located in East Africa, West of Somalia, also bordering Djibouti, Eritrea, Kenya and Sudan.

In 1974, a military junta, the Derg, deposed Emperor Haile Selassie, who had been ruling since 1930, establishing a socialist state. The regime was toppled by the Ethiopian People's Revolutionary Democratic Front (EPRDF) in 1991. A constitution was adopted in 1994 and the country's first multiparty elections were held in 1995.

#### Economy

Ethiopia's economy is based on agriculture, accounting for half of GDP, 60 percent of exports and 80 percent of employment. Coffee is critical to the Ethiopian economy, with exports of US\$156mn in 2002. In November 2001, Ethiopia qualified for debt relief from the Highly Indebted Poor Countries (HIPC) initiative.

#### Competition Evolution and Environment

The 1960s was a period of modernisation of the Ethiopian legal system. During this time, major legislation was introduced, including the Commercial Code (1960), regulating company formation; trade name and trademark regulation; and other elements of business. In spite of the legislative reforms, only a handful of commercial companies abided by the legal framework of these laws.

Until 1974, Ethiopia was characterised by its feudal style of economic governance, where land was the mainstay of the economy and owned only by few feudal lords.

The *coup d'état*, which overthrew the Imperial regime in 1974, installed a socialist Government, which nationalised all land, rented urban houses, and major medium and large scale manufacturing enterprises. The nationalisation scheme marginalised the private sector to petty economic activities and retarded the entrepreneurship skill development of the business community. By regulating all markets and controlling prices, the regime effectively eliminated all forms of competition as well.

| PROFILE   |  |
|---|--|
| Population:   | 68.6 million***                        |
| GDP (Current US\$):   | 6.6 billion***                         |
| Per Capita Income: (Current US\$)   | 90 (Atlas method)***<br>780 (at PPP)** |
| Surface Area:   | 1.1 million sq. km                     |
| Life Expectancy:  | 45.5 years**                           |
| Literacy (%):   | 41.5 (of ages 15 and above)**          |
| HDI Rank:   | 170***                                 |
| Sources:<br>- World Development Indicators Database, World Bank, 2004<br>- Human Development Report Statistics, UNDP, 2004<br>(**) For the year 2002<br>(***) For the year 2003 |  |

Commercial activities remained dormant for another 17 years under the *Derg* regime. Succeeding yet another historic event of political transformation, in 1991, Ethiopia became a country with a liberalised market and an open economic policy.

Since the emergence of the regime in power in 1991, and partial liberalisation thereafter, market based economic activities have become increasingly evident in Ethiopia. Wide scale liberalisation measures, particularly in external trade, have been undertaken. The opening up of the economy, as a condition for the IMF-led SAP undertaken in the 1990s, significantly increased imports, which, in turn, forced most medium and large scale enterprises to substantially lose markets, resulting in a reduction in their production capacity and closing down of many firms. The country has recently applied for WTO membership, which has been accepted, and is preparing for the forthcoming negotiations.

However, there are still areas where strong and strict regulations and control are imposed, like land and

\* Original paper submitted in December 2004

1 <http://www.cia.gov/cia/publications/factbook/geos/et.html>

nationalised urban houses, which are still under state ownership.

### **Competition Legislation**

Following the liberalisation measures, and as groundwork for the WTO accession, the Ethiopian Government issued a Trade Practice Proclamation (No. 329/2002), in April 2002, and which was announced on April 17, 2003 under proclamation No. 329/2003, to promote competition in the domestic markets. Its major objective was to secure a fair competitive process through the prevention and elimination of anticompetitive and unfair trade practices, and safeguarding the interests of consumers, through the prevention and elimination of any restraints on the efficient supply and distribution of goods and services.

The salient features of the proclamation, generally meant for the prevention and elimination of anticompetitive practices in the market and protection of consumer interests, are:

- Any agreement that restricts, limits, impedes or harms free competition, in the process of production or distribution, is regarded as anticompetitive. It includes jointly fixing prices, collusive tendering as to determine market prices, market or consumer segmentation, allocation of quota of production and sales, refusal to deal, sell and render services, etc;
- In the course of commercial activities, any practice that aims at eliminating competitors through different methods is considered an unfair practice. The different methods include, amongst others, creating confusion with respect to the products or services offered by an enterprise; damaging the goodwill of another enterprise unjustifiably; misleading the public with respect to the activities, or products or services, of an enterprise; restricting, impeding or weakening the competitive production and distribution of any commercial good or service; importation of goods at prices less than the actual market prices in the principal market of the country of origin, with the intent to destroy or injure the production of such goods in the home country; trading in goods imported for humanitarian purpose; etc; and
- Unfair imposition of excessively high or low selling price or service fee, or withholding supply or any pre-emptive behaviour to impede entry into markets; misleading commercial statements or notices; hoarding, diverting or withholding goods from normal trade channels; selling at a price that does not cover production cost to eliminate fair competition; etc, are regarded as abuse of dominance.

The proclamation also deals with other aspects related to competition, such as indication of prices of goods, labels on goods, distribution of basic goods, issuing and keeping receipts, etc.

### **Special Provisions**

Certain provisions of the proclamation may not be applicable in the following cases. This depends on the discretion of the Commission established to follow up the implementation of the proclamation.

- Commercial activities that are in accordance with the investment proclamation (which has been changing frequently in the last ten years), exclusively reserved for the Government;
- Enterprises having significant impact on development and specifically designed by the Government to accelerate growth, so called public interest; and
- Basic goods and services that are subject to price regulations.

### **Issues not Addressed by the Proclamation**

The following issues have not been addressed by the proclamation:

- A critical issue missing is related to mergers, takeovers and other forms of conglomerations at domestic, regional and international levels, which could lead to monopoly power in production and service provision. Neither licensing requirements forbid concentration of production, nor does service provision. So the issue of concentration has not been dealt with;
- Copyright, design, patent, and trademarks though addressed in other commercial laws have not been covered;
- Issues related to competition advocacy are not dealt with; and
- Many articles of the proclamation lack specificity and create unnecessary ambiguity.

In brief, it can be observed that some additional refinements in the above framework are necessary for the legislation to meet its desired objective.

### **Institutions and its Competencies**

The Ministry of Trade and Industry (MTI) is authorised to deal with the implementation of the proclamation. An *Investigation Commission*, under the MTI has been established to monitor the day-to-day implementation of the legislation. The Commission is required to receive and investigate complaints submitted by aggrieved parties, and suggests measures in line with the legislation for addressing these complaints. The Ministry has the authority to take administrative measures (even using police force if necessary) in dealing with a particular complaint.

Therefore, issues related to competition are arbitrated outside the regular system of the Courts of Justice in the country. In the case of Ethiopia, this is an especially

contentious issue in light of the fact that the party in power, which also owns large business enterprises, is at the same time, the top decision-making body regarding commercial disputes.

However, a party who is not satisfied with the decision of the Commission can appeal to the Federal High Court within a period of 30 days.

Another important element in the institutional setting is the staffing of members of the Commission. Though the proclamation provides that members of the consumers associations will be selected as members of the Commission, the actual selection has failed to include consumer associations in the *Investigation Commission*. However, the consumer associations in the country are hopeful that they would soon be included as its members, and are presently lobbying the Government for this.

#### ***Powers of the Commission***

*As per Article 15 and 16 of the proclamation, the Commission shall have the following powers and duties:*

- 1) The Commission shall have the following powers:
  - to investigate complaints submitted to it by any aggrieved party in violation of the provisions of this Proclamation;
  - to compel any person to submit information and documents necessary for the carrying out of commission's duties;
  - to compel witnesses to appear and testify at hearings;
  - to take oaths or affirmations of persons appearing before it, and examine any such persons; to enter and search the premises of any undertaking during working hours, in order to obtain information or documents necessary for its investigation;
  - to appoint or engage, upon the approval of the Minister, experts to undertake professional studies as may be necessary; and
  - to take administrative measures and/or pronounce penalty decisions on any complaints submitted to it.
- 2) The Minister shall approve any administrative measures or penalty decisions made by the Commission.
- 3) The Minister may approve, amend or remand for review any decision of administrative measure or penalty submitted to him by the Commission.
- 4) The Commission may delegate part of its powers and duties to the Secretariat to the extent necessary to efficiently discharge its responsibilities.

#### *Power of Execution:*

- 1) The Ministry is authorised by the Proclamation to execute any administrative measures and/or penalty decisions given by the Commission and approved by the Minister.

- 2) The Ministry may order the police in order to execute any administrative measures and/or penalty decisions.
- 3) Any administrative measures and/or penalty decisions shall be executed after obtaining approval of the Minister in writing.

#### **Sectoral Regulatory Laws and Consumer Protection Law**

Ethiopia does not have a consumer protection law in a consolidated form. This does not mean that there is no consumer related legislation at all. Consumer protection legislation in Ethiopia can be seen as a mix of various legal provisions taken from different branches of the country's legal system like:

- The Civil Code {1960} regulates contract and extra-contractual liability;
- The Commercial Code (1960) regulates the various commercial transactions, including company formation; dissolution; liquidation; operation; and general provisions on trade names and trademarks;
- Classification of Hotels, Pensions and Restaurants Regulation (1985);
- The Regulation of Domestic Trade Proclamation (1987);
- The Licensing and Supervision of Insurance Business Proclamation (1994);
- Monetary and Banking Proclamation (1994);
- Privatisation Agency Proclamation (1995);
- Proclamation on the Powers and Duties of Quality and Standardisation Authority of Ethiopia (1997);

#### **Box 43.1: Monopoly in Ethiopian Telecom Sector**

The Government-owned Ethiopian Telecommunications Corporation (ETC) is the country's monopoly telecom company, which provides a national landline and mobile phone network. *EthioMobile*, the mobile division of ETC, remains the country's only mobile operator.

ETC has been repeatedly criticised for its poor performance in delivering telecom services. The company still has less than one percent coverage among Ethiopia's potential fixed line customers. Mobile coverage has mostly been limited to the Addis Ababa region and the customer base is low, compared to other African nations

The Ethiopian authorities started a slow and partial privatisation of ETC two years ago. A few months ago, ETC entered into a •40mn deal with Nokia, to upgrade its poor GSM network. Under the deal, Nokia would provide a full range of GSM and GPRS network infrastructure, including base stations and assist in network planning and implementation, and project management.

*Source: Afrol News, 2004.08.24 (www.afrol.com/articles/13806)*

- The Commercial Registration and Licensing Proclamation (1997);
- Intellectual Property Law (2002);
- Investment Proclamation (2003) (as has been amended several times);
- Patent Law (2001); and
- Copyright Law (2003).

The regulatory authority for the telecommunications sector in Ethiopia was established in 1996, as the Ethiopian Telecommunications Agency. Telecommunications regulatory activities, including the licensing of operators; partial/full privatisation of government-owned operators; and the involvement of the private sector as telecommunications operators; have shown progress in the past year. The progress has been complemented in terms of satisfied demands and increased access.<sup>2</sup>

#### Anticompetitive Practices *vis-à-vis* Consumer Abuse

So far, no official report has been released pertaining to its decisions on any particular case.

There are various types of competition/consumer abuses prevalent in Ethiopia, primarily resulting from:

- Government monopolies in some important service, production and transport sectors, like the Ethiopian airlines; railway transport; *Anbessa* city bus; telecommunication; water and sewerage service; electricity supply; cement production; and other strategic sectors;
- Limitation of competition in oil and petroleum supply, within a few petroleum companies namely: Shell, Total and Mobil;
- Political party-favoured businesses (*party statals*) monopolise imports and distribution of fertiliser, which is a very important agricultural input for the numerous peasants in the country; and
- Auctioning of food items imported for humanitarian aid, like edible oil, wheat and other foodstuffs.

As result of these market anomalies, consumers have been victims of:

- Price escalation and subtle manipulation;
- Lack of quality goods and services;
- Problem of alternative access to goods and services; and
- Restricted bargaining positions.

Some additional concerns, which arise are:

- The Government still controls the supply of foreign exchange. A weekly regular auction, administered by the Government, clears the foreign exchange market. The Government is also responsible for setting the minimum deposit rate;
- The Government still owns most large scale manufacturing enterprises; and
- The ruling political party has also been seen patronising business. As there are no legislative or other measures to limit concentration of production or exchange, it is

likely that these entities could develop into big conglomerates and control markets.

#### Concluding Observations and Future Scenario

Legal interpretations and literature develop in the due course of implementation of a given proclamation.

#### Box 43.2: Commission Not Ready to Handle Disputes Yet

One year and eight months after its creation by federal decree, the Trade Practice Investigation Commission has yet to put its house in order before it tackles any business disputes. It returned, unsolved, an appeal lodged by owners of oil trucks in their dispute with TOTAL Ethiopia.

According to Ephraim Tufer, Head of the Domestic Trade Department at the Ministry of Trade and Industry, the Commission has yet to develop procedures on how to receive complaints, and manuals on how to investigate them.

Owners of close to 206 oil-transporting trucks have now taken their case to a regular court, claiming damages worth 7.1 million Birrs (US\$781,000) from TOTAL, alleging that the international oil giant unfairly put them out of the market. TOTAL Ethiopia covers 25 percent of the annually distributed oil in Ethiopia, estimated to reach 1.4 million cubic litres. Shell Ethiopia covers the major share of 60 percent, while Mobile Oil East Africa Ltd. takes the remaining.

In October 2004, TOTAL and Mobile had issued a public tender, inviting private limited companies, with 20 or more trucks, to bid for its business. This infuriated a large number of small-scale truck owners who felt that the criterion set to qualify as prospective bidders had completely marginalised them.

A month later these truck owners took their case against TOTAL to the Trade Practice Investigation Commission, chaired by Harka Haroye, Minister of Justice.

The Commission's objectives are to 'secure fair competitive process through the prevention and elimination of anticompetitive and unfair trading practices' as well as protecting consumers from disruptions in demand and supply.

Unable to secure an administrative ruling from the Commission, truck owners, however, decided to seek justice from the judiciary and filed charges at the Federal High Court, First Civil Bench, on December 06, 2004. The owners have also appealed to the Court to suspend TOTAL from proceeding on the tender result, until such time as the final ruling is served through the litigation.

Source: *Addis Fortune*, 26.12.04 ([www.allafrica.com](http://www.allafrica.com))

<sup>2</sup> [http://www.uneca.org/aisi/nici/Documents/status\\_of\\_information\\_and\\_commun.htm](http://www.uneca.org/aisi/nici/Documents/status_of_information_and_commun.htm)

Loopholes, ambiguities, inconsistencies with other laws and legal principle may not be identified unless the new law is subjected to judicial exercise. Moreover, there is a general lack of awareness about the existence of this proclamation. All this necessitates that:

- The *Investigation Commission* should be strengthened by financial and human resources, so that it can be technically and administratively fit and active enough to prove its competence, win public confidence and develop as an effective ‘redress platform’;
- The Government should do its best to make the public (in general) and the involved stakeholders in particular, aware of the essence of this competition legislation;
- Institutions, like the Chamber of Commerce, should spread the awareness about the usefulness of competition law within the business community; and
- Consumer protection groups should play their own role in raising the awareness of the consumers on the issue.

Once these are achieved, the competition legislation should be:

- made more inclusive in its coverage of current and anticipated competition issues;
- geared to free itself from some of the ambiguities;
- synchronised with other laws related to consumer interest;
- developed and enriched with legal literature based on actual case experiences, so that further regulatory framework can be set for its effective implementation; and
- further refined and developed to make it compatible with the needs of future economic and political transformations.

It is, therefore, felt that further research is required to outline a strategy to consolidate the competition regime in the country.

Proper monitoring and follow-up of the implementation process of the legislation is imperative to ensure that consumer rights are protected in the effort of maximising economic efficiency, in the country.

---

### Suggested Readings

1. Economic Commission for Africa: ‘Trade and Competition Policy in the Framework of African Countries’, ECA Publications, Addis Ababa, 1997.
2. Gilbert, Montagne: ‘Unfair Methods of competition’, Yale Law Review, Vol. 25. ND.
3. Macaulay, Stewart: ‘Lawyers and Consumer Protection Laws’ Law and Society Review, Vol. 14, No 7, 1979.
4. Winship, Peter: ‘Law and Economic Regulation’ Vol. II (unpublished), Law Library, Faculty of Law AAU, 1989.
5. The Civil Code of Ethiopia, 1960 Proclamation No. 165.
6. The Commercial Code of Ethiopia, 1960 Proclamation No 166.
7. The Penal Code of Ethiopia, 1957 Proclamation No 158.
8. ‘Capacity Building in Support of Preparation of Economic Partnership Agreement and Eight ACP TPS 110’, Final Report.
9. ‘Ethiopia: Diagnostic Trade Integration Study: Concept Paper’, October 22, 2002.

† **Gebremedhine Birega Dagaga**, born on November 7, 1959, B.A in Political Science and International Relations and M.A in International Relations, Bilateral Cooperation Expert by profession in the Ministry of Finance and Economic Development and Vice President of the Ethiopian Consumer Protection Association.

† **Abebe Asamere Endale** has L.L.B Degree and is BA in Political Science and International Relations both from the Addis Ababa University. Currently, he is a Post Graduate student of Public Laws in the same University. Worked as Legal Advisor in the Construction and Business Bank, Public Prosecution Officer; in the Ethiopian Insurance Corporation; Ethiopian Petroleum Enterprise and KK Private Limited Company 1002-1999 since when he has been working as a Private Consultant and Attorney at Law. He is working as a part-time instructor of Commercial laws at the Commercial College of the AAU. He has been writing and presenting articles and papers related with gender politics, political culture, Law and others on consumer issues at different forums.

† **Kibre Moges**, MSc is currently working as a Senior Researcher, Trade and Industry in EEA/Ethiopian Economic Policy Research Institute (EEPRI)