



– Prof. Ernest Aryeetey[†] and Ama Asantewah Ahene^{††}

Ghana¹ is located in West Africa, bordering the Gulf of Guinea, as well as Burkina Faso, Côte D'Ivoire, and Togo. Ghana is a constitutional democracy, divided into 10 administrative divisions, its capital being Accra. Ghana was formed from the union of the British colony of the Gold Coast and the Togoland trust territory, was the first sub-Saharan country in colonial Africa to gain independence in 1957, from the United Kingdom.

Economy

In the early 1960s, Ghana embarked on a state-led modernisation strategy based on import-substituting industrialisation. The aim of the premier Government was to transform Ghana from an agrarian and primary commodity-producing economy, to a modernised industrialised nation in the shortest possible time. Upon failure of this strategy and subsequent military interventions, the economy forged into a liberalised and democratic state, but with a weak grip on the promotion and protection of market competition.

Competition Evolution and Environment

After independence, the new Government of Ghana wanted to overcome the distortions created by the colonial 'trade economy'. This economy was characterised by divergence between production and consumption structures, excessive openness and vulnerability to external markets, high primary exports, backward domestic agriculture, prevalence of small marginal and rural enterprises, and the dominance of the trading sector.

The Government's strategy was to rapidly push Ghana into an industrialised state, with funds from the sales of cocoa; the world price of which was favourable during the post-war era. This strategy was imbibed in the Seven-Year Development Plan, which advocated for the industrialisation through domestic production of import-substitutes, driven by a combination of foreign entrepreneurship and state capital, with emphasis on modern capital-intensive techniques.

PROFILE	
Population:	20.4 million***
GDP (Current US\$):	7.7 billion***
Per Capita Income: (Current US\$)	90 (Atlas method)*** 2,130 (PPP)**
Surface Area:	238.5 thousand sq. km
Life Expectancy:	57.8 years**
Literacy (%):	73.8 (of ages 15 and above)**
HDI Rank:	130***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

However, the plan could not be maintained due to the collapse of favourable market conditions for the export products, that was its major source of funding and, thus, the high investments could only be continued through deficit financing and foreign borrowing. Although the Nkrumah Government was overthrown, subsequent governments, largely military with the exception of the Busia administration, still attached great importance to the role of the State in economic management.

Since the inception of economic reforms in 1983, various macroeconomic and institutional reforms have evolved with the aim of developing a stronger market economy. One of the major reforms was that the public sector withdrew from direct production of goods and services; but the involvement of the private sector in such economic activities necessitated the introduction of regulatory measures and institutional strengthening, to prevent the creation of monopolies, which could be detrimental to the general public.

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

Competition Legislation

The 1992 Constitution, with its 'directive principles of state policy', guides Government and all citizens in their pursuit of national development. It also enjoins Parliament to enact relevant bills, and set up institutions to ensure a just and free society, whilst maintaining basic human rights as well as ensuring a healthy economy. Accordingly, the legal system stresses all the attributes and safeguards for the protection of property and human freedom. Thus, the constitution gives power to the Parliament, to make laws by passing bills aimed at regulating economic or business activities in the wider public interest and ensuring fair or honest trade practices.

There is, however, a general view among the informed people that, as a nation, the imposition of measures to foster competition in the product, financial and labour markets, as well as in the public utilities, is seen as a compulsion and not out of national conviction of the benefits of these principles, as in the attainment of social objectives. This notwithstanding, various Acts have been formulated to create institutions that regulate certain economic activities in the country. Examples include Energy Commission (Act 541), Public Utility Regulatory Commission (PURC) (Act 538) and 'Protection against Unfair Competition Act, 2000' (Act 589) which is the main legal authority that protects producers and consumers of goods and services.

In September 2000, a Bill was presented before the Parliament on Competition and Fair Trade Practices, which seeks, amongst others things, to establish a Commission that would ensure fair competition in trade practices, as well as a Trade Practices Court.

The rationale of the Bill is to control 'Restrictive Business Practices' (RBPs), which is explained as practices employed especially, but not exclusively, by multi-national enterprises, to influence the pricing, marketing and distribution of goods and services. The RBPs may involve collusive tendering; market and customer allocation; concerted refusal to supply; and discrimination and unfair pricing, including the use of affiliated enterprises. The two basic types of RTPs expounded by the bill are:

- those, which involve restrictive agreements between firms engaged in the market, in rival or potentially rival activities; and
- those, which are entered into by enterprises through an abuse or acquisition, and abuse of a dominant position of market power.

Protection against Unfair Competition Act (Act 589)

According to Act 589, commercial behaviour, such as causing confusion with respect to another's enterprise or its activities; damaging another person's goodwill or reputation; misleading the public; discrediting another person's enterprise or its activities; misleading advertisements and violation of trade secrets; as well as

breaching Ghanaian law or international or regional obligations, contrary to honest business practices, constitutes an act of unfair competition.

The Act 589 clarifies 'causing confusion' as any act or practice, during industrial or commercial activities, that causes or is likely to cause confusion with respect to another person's enterprise or its activities, and the products or services offered by that enterprise. Confusion may be caused with respect to:

- Trademark, whether registered or not;
- Trade name;
- Business identifier other than a trademark or trade name;
- The presentation of a product or service; and
- A celebrity or well-known fictional character.

Thus, the product, service or business activity could be protected if it has sufficient distinctiveness to distinguish it from the same or similar activities of other traders or competitors. Also, an act or practice in the course of industrial or commercial activities, that damages or is likely to damage the goodwill or reputation of another person's enterprise or its activities, constitutes an act of unfair competition, whether or not the act or practice causes confusion.

'Misleading acts', which directly affect the consumer, can roughly be defined as creating a false impression of a competitor's product or services. This can have serious effects, such that the consumer who relies on the incorrect information may suffer financial prejudice, and the honest competitor may also lose clients. Thus, the transparency of the market diminishes with adverse effects for the economy and welfare. Misleading acts may arise out of advertising or promotion, particularly with respect to the manufacturing process, suitability, the quality and quantity, geographical origin, the conditions and the price of the product.

'Discrediting acts' imply false allegations concerning a competitor, which is likely to harm his commercial goodwill. The aim is to entice consumers with incorrect information and the consequences could be detrimental, not only to the competitor but also to the consumer.

Again, violation of trade secrets, where one's manufacturing secrets and commercial secrets, which may either be information of a purely technical character, is divulged without the owners' consent, constitutes an act of unfair competition. Secondly, disclosure, acquisition or use of secret information by another person, without the consent of the rightful owner may, in particular, result from:

- Industrial or commercial espionage;
- Breach of contract;
- Breach of confidence;
- Inducement to commit any of the three above; and

- Acquisition of secret information by a third party who knew, or was grossly negligent in failing to know, that an Act referred to in the above was involved in the acquisition. According to the Act, information is ‘secret information’ if:
 - ◆ It is not, as a body or in the precise configuration and assembly of its component, generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question; It has commercial value because it is secret; and
 - ◆ It has been subject to reasonable steps under the circumstances by the rightful owner to keep it secret.

Any act or practice, in the course of industrial or commercial activities, shall be considered an act of unfair competition if it consists or results in:

- An unfair commercial use of secret test results or other data, the origin of which involves considerable effort and, which has been submitted to a competent authority for the purposes of obtaining approval for the marketing of pharmaceutical, or agricultural chemical products, which utilise new chemical entities; or
- The disclosure of such data, except where:
 - ◆ It is necessary for the protection of the public; and
 - ◆ Steps are taken to ensure that the data is protected against unfair commercial use.

In addition to all stated above, any act or practice in the course of industrial or commercial activities, that is contrary to honest practices, constitutes an act of unfair competition.

Anticompetitive Business Practices

However, before a regulatory body was established and/or the formulation of Act 589, there were cases that bordered on consumer protection and unfair trade practices, in which the common laws of the nation were used in their adjudication. Two of such cases are presented below:

One naturally wonders how these cases would have been ruled if they had occurred after the enactment of the ‘Protection against Unfair Competition Act, 2000’- Act 589. To easily judge cases like the examples given above, Legislative Instruments (LIs) were issued by the Minister of Justice, for the purpose of developing regulations aimed at protecting the public, as consumers and producers of goods and services, from unfair competition.

Sectoral Regulation

The Public Utilities Regulatory Commission (PURC) was given the mandate under Act 568 to enforce regulations concerning utilities.

- Public Utilities Regulations 1999, dealing with the termination of service, LI 1651, sets out the

Box 45.1: Consumer Vs Utility Company

Hasnem Enterprises Ltd sued Electricity Corporation of Ghana for negligence, as a result of damage to equipment used at the premises of the plaintiff, by the defendant for business, in 1981. An underground cable belonging to the defendant, delivering electricity to the plaintiff at his premises, broke and damaged the equipments of the plaintiff. The lower court dismissed the case for lack of enough evidence to establish a case of negligence against the defendant.

An appeal was filed the High Court in 1996, and the same ruling was given as in the lower court. In 1998, the plaintiff took the case to the Supreme Court which ruled in his favour with conclusions that:

- The defendant knew, from available evidence, that there were technical problems with power supply in the area that the plaintiff operates; and
- He also knew the possible consequences of such problems, to the users, but failed to take corrective actions.

The Supreme Court found the defendants liable for the damages and ordered payment of compensation.

circumstances under which utility services to consumers may be terminated; and

- Public Utilities Complaints Procedure Regulations 1999, LI 1665, states the procedures by which any person (utility or consumer) may lodge a complaint with the Commission.

Upon a complaint to the Commission, regarding an act of a utility provider contrary to the utility regulation, the Commission will, in writing, direct the provision of the reasonable service that should be provided by the public utility. This would be in compliance with the relevant requirements of utilities. The commission also seeks compensation for consumers, where necessary, and gives guidelines for fixing the rates of utilities, amongst other things. Since its inception in 1997, the Commission’s major cases have been complaints relating to billing, tariff increases and quality of service. Out of the 364 cases that the Commission received between 1999 and 2000, only 180 were resolved with the remainder still pending in court.

The Energy Commission was set up under Act 541, which requires the Commission to work together with the PURC to develop standards of performance for the supply, distribution and sale of electricity or natural gas to customers, by licensed public utilities. The law makes provisions for the payment of compensation, where the utility fails to satisfy standards set by the regulatory body.

Box 45.2: Manufacturer Versus Manufacturer

Accra Brewery Ltd (plaintiff) sued Guinness Ghana Ltd (defendant), seeking an order of interim injunction to restrain the defendant from entering into or enforcing an agreement entitled ‘Guinness means profit’ with outlet owners of alcoholic beverages. The plaintiff manufactures products (Club Super Stout, Club Dark Beer and Castle Milk Stout) that compete with the products (Guinness Foreign Extra Stout) of the defendant. The arguments of the plaintiff were that:

- Guinness Ghana Ltd had entered into a ‘money induced’ (a term used by the plaintiff) agreement with about 183 retailers of alcoholic beverages in 1999, which bound these retailers to stock and advertise products of only the defendant. Hence, these retailers refused to stock the products of the plaintiff;
- It was unlawful for the defendant to induce their common customers to break their contracts with the plaintiff;
- The conduct of the defendant was preventing the Ghanaian public from exercising their freedom to choose any alcoholic or non-alcoholic beverages in drinking bars, or other authorised places where the plaintiff’s and defendant’s products were sold;

- The defendant’s act of inducement contravened the tenets of social and economic liberty and prosperity of the individual to trade with whom he pleases and the prosperity of the nation by the expansion of the total volume of trade; and
- He (the plaintiff) had lost substantial income as a consequence of the activity of the defendant.

The Judge ruled against the plaintiff, giving the judgment that:

- There was no evidence of the defendant seeking to create a monopoly;
- There was no evidence that the defendant, by his own actions, was seeking to prevent customers from buying similar products more cheaply from elsewhere. This was since the products had the same sale price that was determined by agreement among the producers; and customers were free to choose which outlets they could buy from;
- There was no evidence that the defendant’s market share had risen, as a consequence of the agreement; and
- There was no evidence that the public interest was likely to suffer, as a result of the agreement between the defendant and the selected retailers, since consumers still had a choice.

The National Communications Authority (NCA) was set up in 1996, under Act 524, with the main objectives being:

- ensuring that communications services are provided throughout the nation, as far as practicable, to satisfy the consumer demands;
- provision of communication services being highly efficient and responsive to customer and community needs;
- promotion of fair competition amongst persons engaged in the provision of communications services;
- protection of operators and consumers, from unfair conduct of other operators, with regards to the quality of communications services; and
- protection of consumer interests.

The NCA, in its duties, is required to grant exemptions from licences; the treatment of applications for licence; conditions of licence; monitoring performance of equipment and compensation for damage; standards of performance as well as suspension and cancellation of licence; amongst others. The NCA is the body that must settle all disputes between operators. Under fair competition, the regulations provide that an operator, who controls a network or facility, may not limit access to his/her network for competitors. In addition, a dominant operator in a geographic market, specified in a licence, should not resort to conduct or practice that unfairly

disadvantages rival operators, or calculated actions to curb competition.

Other regulatory activities that promote competition in the economy are:

- *The Bank of Ghana Act*, which regulates the banking industry, with a focus on the costs of the institutions; removing obstacles to entry into the markets; and reducing risks associated with information to make a more competitive financial market.
- *The Securities Exchange Commission* that regulates the Ghana Stock Exchange; and
- *Ghana Investment Promotion Centre* that is given the mandate to develop a fair investment climate in Ghana.

Furthermore, there is the gradual growth of civil society organisations that exert pressure on Government and public institutions to advance fair competition in the country. Examples include the Centre for Democratic Development (CDD), Centre for Policy Analysis (CEPA) and Institute of Economic Affairs (IEA). Currently, there is also a growing public interest in the issues concerning regulatory activities in the nation, and this can be observed from a myriad of call-in programmes (a public participatory programme on television and radio) on issues relating to regulation and consumer/producer protection.

Consumer Protection²

Consumer protection issues actually deal with quality and wholesomeness of goods, pricing and the labelling of goods, certification, etc. It has to be emphasised that there are various laws dealing with consumer protection, which are already in existence. Some of these are:

- Food and Drugs Law;
- Weights and Measures Decree;
- Pharmacy Act;
- Standards Decree;
- Sale of Goods Act;
- Ghana Standards Board General Labelling Rules 1992;
- Protection Against Unfair Competition Act (Act 589);
- Competition and Fair Trade Practices Bill; and
- Products Liability Bill, which are both, at the moment, awaiting enactment.

With liberalisation still in process, issues concerning consumer protection would be dealt with, as and when appropriate, under various laws as listed above.

However, efforts are being made to revise some of the existing laws. Consideration is also been given to the enactment of a single law on Consumer Protection, as part of the Competition and Fair Trade Practices Bill, as previously highlighted. The enactment of this legislation has become necessary as a result of the Government's policy of trade liberalisation.

On February 21, 2005, at last, the Ghanaian Government has shown it is ready to implement measures to ensure that Ghanaian consumers are protected. In its recently launched trade policy document, the Government also says it wants to create the environment that promotes fair trade and enhances consumer welfare.³

Concluding Observations and Future Scenario

Ghana has provided an environment in which the competition authorities and sector regulators co-exist under various conditions to ensure coordination and policy

² http://www.moti-ghana.com/consumer_protection.htm

³ <http://allafrica.com/stories/200502210625.html>

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Box 45.3: Other Efforts at Improving Competition and Consumer Protection

UNCTAD, in collaboration with Consumers International's Regional Office for Africa (CI-ROAF), organised the Regional Seminar on the Interaction Between Consumer Policy, Competition Policy, Competitiveness and Development, in Accra, Ghana on August 21-22, 2001.

Participants included some 50 experts representing consumer organisations, competition authorities, government departments, and the private sector from 18 countries.

The seminar comprised three discussion groups, namely, (1) making globalisation favourable to developing countries; (2) convergence between consumer protection, competition policy and development; and (3) review of experiences.

The participants exchanged concrete experiences and practical approaches to addressing the issue of consumer protection in developing countries. The participation of the private sector, including a multinational corporation, resulted in a constructive melding of perspectives.

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

coherence between sector regulators and the competition authority. Thus, the country combines technical and economic regulation in a sector regulator and give it some or all competition law enforcement functions such that more than one approach might be employed within the country.

Ghana is additionally anxiously waiting for the Bill on Competition and Fair Trade Practices to be passed into law, to strongly promote fair competition in its liberalised economy for healthy, national development.