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**Introducing Competition Policy and Law in Mozambique**

## **Inception Report**

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# INCEPTION REPORT

Project No. 2007/145295

## Introducing Competition Policy and Law in Mozambique

by

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Submitted by

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# 1. EXECUTIVE SUMMARY

This inception report focuses on the output of the initial fact finding mission of the BizClim consultants, the analysis of Mozambique key industrial sectors, benchmarking analysis of best Competition Laws and finally the feasibility of establishing a Competition Law and enforcement agency in Mozambique.

In order to gather evidence on the feasibility and justification (or not) of introducing a competition policy and law in Mozambique, the consultants made (1) an industrial sector research on competition issues and (2) organized an initial discussion workshop with various representative of government and the private sector (Dec. 2007) (see questionnaire and list of participants in Annexes 1 and 3).

This report corresponds to the first and second deliverables as mentioned in the “required output” section of the Terms of Reference EuropeAid/ 119860/ C/SV 6 N.2007/ 145295, i.e. :

- Initial report on the feasibility of introducing a competition policy and a competition law in Mozambique;
- Drafting key elements of the competition policy and law to be submitted for approval to the Council of Economic Ministers (and for validation through the “Stakeholders Workshop”)

Furthermore, this Competitive regulatory initiative needs to be understood in the context of the recent Competition Policy (Politica de Concorrenca) adopted by the Mozambican government on 24 July 2007 (Publication BR N.45, I Serie, “rd supplement 17 Nov 2007) which requires to set out a legal and institutional framework for the regulation of competition in Mozambique.

This study also correspond to the overall goal of the European Union ACP Business Climate initiative which aims at fostering a business enabling environment in recipient countries by improving legislation, institutional frameworks and financial measures related to that goal. This Competition Law and Regulation project is implemented with the support of the ACP Business Climate Facility (BizClim), an initiative of the European Commission and the ACP Group of States financed under the 9<sup>th</sup> European Development Fund. BizClim is aiming at fostering a business enabling environment in ACP countries or regions by improving legislation, institutional frameworks relating to the enabling environment of the private and public sector.

Competition policy has been accepted as a critical tool for addressing competition issues and behaviors in transition economies and emerging markets, nearly all of which have undergone profound privatization and deregulation programs in the 1980s and 1990s.

Since 1989, Mozambique has returned some 1200 small and medium size enterprises to private ownership, roughly one third of these in the manufacturing sector, the rest being in the service, construction, agriculture and fishing among others. The dramatic result of this far reaching privatization program is that in contrast to the 1970s where public enterprises accounted for 70% of GDP; today the public sector share is down to less than one-fifth of Gross National Product. After over 10 years of robust growth, the Mozambican economy is now dominated by private companies, many of them foreign-owned or linked to foreign capital, which competes for a share of a more diversified economy and a more robust purchasing power.

During our initial fact finding mission and also based on the UNCTD report on anti-competitive practices, we performed a quick “scan “of a number of Mozambican industrial sectors. This scan reviews vertical sectors according to two methodologies:

- a simple “Four Stage of Competition” model, which plots the industrial sector on a scale going from “Monopoly (no competition)” down to “Liberalized sector” that is with 6 or more active competitor in the sector.
- The Five Force Competition model of Harvard Professor Michael Porter, which looks at the relative strength/ weaknesses of Suppliers, Customers, Substitutes, New entrants, and current players themselves (from Low to High)

According to our survey of key industrial sectors, the Mozambican shows a contrasted picture of “competition intensity” according to the sector chosen:

	Monopólio	Duopólio	Concorrência limitada 3 < X < 6	Liberalizado
Águas	●			
Electricidade	●			
Bebidas/ Cervejeiras	●			
Telecom.		●		
Portos/ Ferros.		●	●	
Transp. Aéreos		●		
Agricultura (Açúcar)	●		●	
Construção				
Moagem/ prod. Alimentarias			●	●

- Besides Telecommunications which has a healthy duopoly and an established regulator;
- Most Public Services utilities (Energy, Water) are still de facto Monopolies, with some initiatives to deregulate the generation and the distribution segments;
- Some sectors, such as the Beer industry and the beverage industry in general has gone from a limited competition back to Private Monopoly (with the purchase of the last independent beer maker by a subsidiary of SAB Miller of South Africa, already owner of the largest beer maker in Mozambique, CDM? M2);
- Ports and Railways (CFM and the various privatized port terminals) have gone from a Monopoly to a more liberalized regime; Different players are managing the three railways networks of the South (Maputo), Center (Beira) and North (Macala) regions. Also, in 1997, various specialty terminals were privatized, including that of Coal, Containers, and Citrus; the CFM still own and handle the four general purpose terminals, including the Sugar one;
- Agriculture which will be analyzed below, albeit having five producers of sugar cane, would be best described as an institutionalized cartel, as the government has participations in the four largest producers and control prices through the monopoly wholesale distributor DNA, controlled at 25% level by each of the four producers. Barriers to entry in this markets are still high in a sector with high potential for export growth and energy substitution;
- The industrial sector of Mills and production of wheat related products is fully competitive with 8 players competing for a limited national market; some bottlenecks do exist at the level of wholesale distribution;

*A first conclusion hence is that while Mozambique needs a wide spectrum Competition law, a strong emphasis should be given to the regulation of Monopolies and the liberalization of state owned utilities and distributors. The strong verticalization of some industries is clearly an impediment to the entry of new entrants and potential investors. A corollary to this is that the future "Competition enforcement" body will have*

*to closely coordinate actions with the sector-specific regulators, such as Telecom, Water and the (still to be created) Energy regulator.*

As Mozambique is now part of the SADC regional market, alongside more intensely competitive economies such as South Africa and Zimbabwe, the country need to prepare a regulatory framework that is aligned with best practices in the region or similar economies. The goal of such a competition regulation is to ward off potential anti-competitive behaviors such as horizontal agreements, cartel formation, abuse of dominant positions and supply and/ or distribution vertical agreements, amongst others.

Also, given growing mergers and acquisitions activities in Sub-Saharan Africa and around the world, Mozambique need to be prepared to rule, accept/ or rejects on proposed mergers affecting key sectors of its economy, and hence build up an institutional capacity to guide administrative ruling either through advocacy or a more formal competition law and legal norms.

*The purpose of this initial analysis was to answer the question of “assessing the feasibility of introducing a competition policy and law in Mozambique” and “whether this goal would be best served by focusing on advocacy alone, or whether the current national industry structure and regional trends warrants a formal Competition legislation and its implementation arm: a Competition Authority.*

Even though we do not underestimate the resources, skills, and learning curve challenges of building up an effective competition enforcement authority, our conclusion actually is that the best way to achieve advocacy and effective dissemination of good practices is to adopt a Competition law and create a competition regulator sooner than later.

When reviewing best practices of competition management in Africa – and particularly those of Austral Africa -, it appears actually that one of the best way to raise awareness on the role of healthy competition in the country is actually to build up a competition authority which can review and investigate anti-competitive behaviors, and hence instruct a public (or publicly available) investigation and hearings about cases at hand.

Having said that, we do not underestimate the resources, skills, and learning curve challenges of building up an effective competition enforcement authority, especially when limited government resources compete one with another, and, at times, more pressing industrial policy departments and objectives. The process of building up institutional capacity in countries like Zambia, Tanzania, and even South Africa has been far from easy. However, as Competition Commissions and Tribunal matures and the initial learning curve is overcome, increasing benefits have been derived from having these regulatory bodies who can handle increasingly sophisticated cases and also make the proceedings and decision available to the public.

The results of the initial workshop with representatives from the government, regulatory bodies, the public and the private sector tend to favor the drafting and adoption of a competition law and fixing clear rules regarding the range of competitive issues facing Mozambican market today. This inception report will attempt to take this argumentation further and show evidence that such Competition framework is indeed needed in the near and medium term.

From and institutional point of view, the consensus was around building up (incrementally) a Competition Regulation entity, within the Ministry of Industry and Trade at first (to share resources and information) with the aim of creating an independent Competition enforcement authority as seen and adopted in most countries from the SADC trade community.

Both members of the Government and the consultants do recognize that institutional capacity building is a challenging and incremental process and that a number of “critical success factors (CSF)” need to be in place before the future Mozambican Competition Authority can be fully functional and effective, among these:

- 1. Drafting and adoption of a Competition Law (2008)**
- 2. Creation of an (eventually) independent and autonomous authority to enforce competition** – which may go through a transition period within a given Ministry (formalizing a Competition Task Force within the Ministry of Industry and Trade – but with an established calendar for spinning off);
- 3. Identification and recruitment of a strong legal, economic, and case review team** with intensive initial training over competition regulation and/ or shadow management with other country regulators (South Africa, Portugal, Brasil); key members of the commission may come from outside the government and be respected members of the business or legal establishment;

4. **Advocacy of Competition throughout the various government bodies and ministries** – in order to align the main government, public service, and related organizations with the need and urgency to embrace a fully competitive market, and implement the main lines of Competition policy.
5. **Establish a detailed roadmap for the creation and implementation of the Competition Regulation Authority** – with milestones and key performance indicators.

In order to fulfill these CSF, there is no doubt that the young Competition Task Force will need initial support and training resources in order to build steam and capacity. Hence, very much like a start up in business, we foresee an “incubation period” for the future Mozambican Competition Commission. The resulting benefits for the country will no doubt warrant the investment in capacity building. In our analysis, additional resources will need to be allocated (with needed sponsorship from the EU or other donor agencies) in order to accompany the crucial first two years of the regulator existence.

As the underlying purpose of this mission is to finalize the 15 year long process of building a consensus needed to adopt a competition policy and law, the consultants have both relied on the major studies undertaken by USAID (Nathan) and UNCTAD among others, but also taken some distance vis a vis some of the conclusions of these reports.

We hope that the far reaching consultation process undertaken over the next few weeks, with the support of the Ministry of Industry and Trade and BizClim, will validate and provide a final chapter in setting out a Competitive framework for Mozambique.

YS.

## **2. MIC INITIAL WORKSHOP ON COMPETITION POLICY**

### **2.1. MIC Competition initial workshop: legal issues and cross sector restrictive practices**

On 20<sup>th</sup> December, ACE consultants organized a half day workshop with key representatives of various governments, chamber of commerce, consumer associations and regulators (see complete list in Annex 1), including:

- Ministry of Industry and Trade
- Ministry of Agriculture - CEPAGR
- Banco de Moçambique
- INCM (Telecommunications Regulator)
- SOMAS
- IPEX (Mozambican Institute of Export Promotion)
- IPI (Instituto da Propriedade Intelectual)
- DECOM (Associação de Defesa do Consumidor de Moçambique)
- Câmara de Comércio de Moçambique
- Nathan Consulting (MIC)

The purpose of the Workshop was to provoke an initial discussion regarding the key issues related to Competition in Mozambique and also explore the conditions of success for the implementation and advocacy of the Competition law. The specific objectives of the workshop were:

1. Review of the current legal and regulatory framework and foresee the main elements of the future competition law;
2. Analyze 4-5 key sectors of the Mozambican economy and identify some anti-competitive and/ or restrictive issues;
3. Foresee structural, independence, and resources issues and problems related to the creation and implementation of the Competition enforcement agency.

Mr. Fernando dos Santos initiated the workshop with a review of the current legal framework in place related to Competition (see Legal section of this report). The central initiative which prompted the current project was the adoption on 24<sup>th</sup> July 2007 of the Competition Policy by the Mozambican government (Publ N. 45) stating the need to establish both an institutional and legal framework for competition in Mozambique.

The following Laws and texts already make reference to a number of social, economic, private and public sector development and investment aspects of competition: the Constitution, the Investment Law, the SADC Regional protocol, and sector specific laws (water, public services). The most elaborated regulation related to competition is to be found in the Telecommunications Law (Law n. 8/2004) and the regional Trade Protocol of SADC (Southern Africa Development Community).

Key issues raised at the workshop as related to the elaboration and adoption of the Law were:

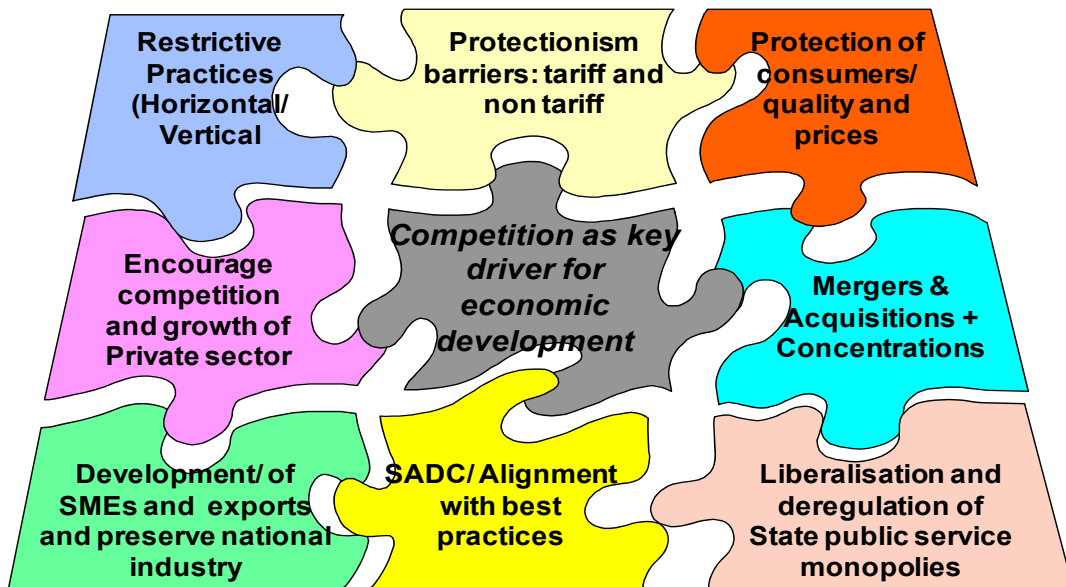
- Need to develop a clear legal framework to both reinforce the national private sector and also ensure healthy and competitive behaviors from all players, public and private;
- Promote a culture of competition in Mozambique;
- Need to ensure consistency between the Competition legal framework and enforcement and Sector specific regulatory frameworks and agency work; Sector specific decision or liberalization should be coordinated with the regulators;
- The implementation of the competition norms should be done gradually and stress the development of Small and Medium enterprises as well as export oriented ventures, and preserve sectors that are deemed strategic to the state;
- The output of this process is a complete Competition Law
- The Law will be approved directly by the Government and at the Ministry Council level (Conselho de Ministros);

In terms of the issues related to competition in Mozambique, these were raised through a structured review of the main categories of anti-competitive behaviors and practices. The goal was to bring government



stakeholders responsible for industrial and sector policy to speak out about suspected anticompetitive behaviors and restrictive practices.

The main drivers/ issues of the competition policy and law are summarized in the illustration below:



We asked the participants to give their inputs and provide their opinions and potential cases/ anti-competitive practices for the following five Competitive issues. We provide at the same time a clear definition of the main building blocks for most Competition Laws and some policy pointers.

### 2.1.1. Pilar N.1: Horizontal Agreements and Cartels

Restrictive horizontal practices include, among others, direct and indirect fixing of prices or trading conditions, as well as control or limitation of production, markets, investments or technical development and also sharing of markets/ suppliers. The most common horizontal agreements are those that fix artificially prices and those that share markets/ segments of customers.

Cartels, much like monopolies, have similar objectives in Mozambique: to limit market entry to new entrants and limit competition, above and beyond the economic benefits derived from sustained high prices and guaranteed profit margins. Given that Mozambique is a young, recovering economy, with a limited number of players in each sector, the temptation is great for existing players to extend as much as possible the benefits of price fixing through the formation of cartels and/ or Monopolies (Abuse of Dominance).

As far as examples are concerned, some representatives from the government and consumer associations mentioned two potential cases fitting Horizontal price and market fixing:

- *Price fixing of royalties % and collusion between Publishing (Editoras) firms for the Ministry of Education tender for school books (14 million books market, representing a US\$18M revenue stream);*
- *Horizontal agreements between pharmacies in Maputo on pricing of drugs*

Of course, one should be careful before stigmatizing a player or an industry in particular for “anti-competitive” practices. In some cases competitor collaboration can be allowed where it contributes to the economic welfare without creating a risk for competition. Agreements for joint purchasing and commercialization (that is selling, distribution and promotion) can be acceptable if the parties for instance have a low combined market share (in the EU the safe harbor is a combined market share of 15%), co-operation is not likely to restrict competition.

The analysis of horizontal agreements and cartels depend on a close look and determination of the nature of the agreement, definition of markets, and evaluation of market structure and market power, including

considerations such as the nature of the products, markets concentration, barriers to entry, and the countervailing power of buyers or suppliers (hence our suggestion to analyze each key industrial sector using a Five Force competition model, which can be used a “stretching exercise/ initial sector analysis” by the incoming competition regulatory entity).

### **2.1.2. Pilar N.2: Vertical Agreements**

Restrictive vertical practices include, among others, agreements between players and segments operating at different levels of a vertical industrial or service sector i.e. market restrictive deals between producers and distributors, or suppliers and producers. For instance restrictive practices by wholesale distributors fixing minimum resale prices and excessive territorial protection should be prohibited.

In the case of Mozambique, interviewed private sector players and workshop participants have pinpoint to the following restrictive practices, mostly related to the distribution and Food / beverage industry:

- *Restrictive behaviors and price fixing practices by wheat and flour wholesaler distributors. Even though the milling and manufacturing of wheat and corn products is fully competitive (8 players), the wholesale distribution is concentrated in a few hands which can yield considerable power when setting out the pricing of food & beverage products.*

There can be some exemptions to restricting vertical agreements, including vertical agreements involving associations of retailers, as either the total market share of their agreement is below a certain threshold (to be determined) and/ or the total turnover relative to total market is too low to really make an impact on competition or consumer interests.

Again, one needs to be careful when analyzing a vertical agreement case. Agreements between suppliers or distributors that have market share under 25-30% levels is not usually considered harmful to retailers of consumers. On the other hand fixing of minimum retail or resale prices by distributors with great market power should be put under scrutiny.

### **2.1.2. Pilar N.3: Abuse of Dominant Position/ Monopoly**

Curbing abuse by firms that dominates markets and suppress competitors or harm consumers is also an element found in most Competition regulations. Dominance is actually a broader concept than simply market power over price – and also is not exactly the same as economic Monopoly, even though a Monopoly with market share above 90% would be clearly dominant.

In the European treaty Abuse of Dominance is described as “position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors , its customers and ultimately of the consumers”<sup>1</sup>

The list of abuses is among other:

1. imposing unfair purchase or selling prices or trading conditions
2. limiting production, markets, or technological developments; in ways that harm consumers;
3. discriminations that places trading parties and new entrants at a competitive disadvantage and;
4. imposing non-germane (unfair) contracts or tender conditions

Dominance is often presumed when the firm has a market share of 50% or above. However it may be found at lower levels depending on other factors, other than market share, such as the number and relative size of other firms and the conditions of entry to the market. A good starting point is to pay attention to all firms, whose market share are above 50% and pay really close attention to “super-dominant” firms with shares over 90%, starting with state or private monopolies.

In the context of the Mozambican market, the workshop participants pointed to the following possible “candidates” for fitting the definition and suspicion of “abuse of dominant position”:

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<sup>1</sup> European Court of Justice Hoffman-LaRoche (79) and United Brands (78) judgments; Also Article 82 of the European Community Antitrust law.

- *Media: TV Cabo – dominant position of DSTV, the main cable TV operator. Main issues relate to excessive selling prices and a restricted product choice*
- *Companhia de Cimento de Mocambique: dominant position and control by CCM over cements extraction and supply of the commodity to the construction industry (market power over pricing and supply of a key commodity in a market that enjoy a boom in civil work and private construction).*
- *Energy: EDM (Electricidade de Mocambique), the state owned power monopoly clearly has a “super dominant” market share; and could dictate its prices, service level agreements, and billing / power cutting practice at will;*

The issues of abuse of dominant position in Mozambique will most likely start with the need to further liberalise the key public service sector of state owned utilities – such as water and electricity (telecommunications being already liberalized and regulated). This is a complex albeit necessary undertaking which should be coordinated with the relevant ministry and regulator (if created). However a Competition Commission and/or enforcement entity would most certainly incentivize the further liberalization of these players and sectors.

Particularly the sector of Energy production and distribution would most benefit from the winds of competition, given the enormous potential of Mozambique for providing Hydro-electric power, coal, and biomass energy for the region. Mozambique is a prime case where a key driver of sustainable growth can be a healthy investment flow and export oriented production of energy. This requires diversifying the players, the investment base and hence reduces gradually the relative power of the incumbent Energy Monopoly.

### **2.1.2. Pilar N.4: Mergers & Acquisitions**

The issue in international and national mergers and acquisitions is becoming increasingly relevant for the Mozambique economy as it is now a truly open economy with equivalent treatment between national and foreign owned players. The privatization programme of the 1990s provided a first taste of true mergers and industry consolidation. The first half of the year 2000s saw the entry of major international players in the market, such as SAB Miller, Billiton (Mozal), and score of other firms eager to tap the new opportunities created by the sustained economic growth of the country.

Basically a Competition authority only needs to prevent or intervene on a merger that could significantly affect or impede effective competition, mostly but not exclusively as a result of the strengthening of a dominant position. As a rule of thumb (US standard), a merger does not impede effective competition if the new entity's market share would not exceed 25%. But this percentage and market power can vary according to a large number of third party and supply arrangement, potential for substitution between the merging firm's products, and relative impact on remaining rivals.

For a well resourced and fully functioning competition authority, normally all intended mergers transaction need first to be reviewed and cleared by the merger commission within the authority. Increasingly a concerted “regional” approach will be needed and coordination with competition authority of other SADC countries may be needed to review cases.

Within Mozambique, the initial workshop mentioned two cases that most likely altered the competitive balance of the market:

- *Banking sector: the acquisition by the BIM bank of Caixa. BIM, owned by the Portuguese holding Banco Comercial Portuguese (BCP), is the largest bank in Mozambique, with 45% market share. The new BIM was already the result of the merger between Banco Comercial de Mocambique (BCM) and the proper Banco Internacional de Mocambique (BIM); The further acquisition of Caixa raised the issue of market dominance in a banking sector that is still young and with high barrier to entry (high initial capital to create a new banking in current prudential regulation)*
- *Beer and beverage market: SAB Miller through an initial acquisition of 39% and in 2003 of another 9.5% acquired a dominant share of Cervejarias de Mocambique, the country largest brewer, with flagship brand 2M; It latterly acquired, albeit indirectly through a subsidiary, the second beer brand in Mozambique, Laurentina, bringing its market share to the same level as South Africa i.e. 90% or above.*

Even though Merger economics is complex, our benchmarking analysis shows that it has proved to be a strong learning sources for the newly formed competition authorities. In South Africa for instance, a key

member of the Competition Tribunal pinpoints: “it has not only honed the general investigative skills of the commission staff but has also immersed both the commission staff as well as the Tribunal members and staff in cutting edge competition analysis,<sup>2</sup>

### **2.1.2. Pilar N.5: Exemptions and exceptions**

Especially in the context of a young economy, whose private sector has not yet reached maturity, Mozambique will need to establish a list of special cases where economy wide exemptions or sector specific exclusions can be granted.

For instance in the Competition Act of South Africa, the anti-trust laws and prohibition are balanced by a scheme of exemptions that incorporate policy considerations other than competition. Exemptions may be for a particular agreement or practice or for a general category of them.

Grounds for exemptions include for instance:

- Maintenance and/ or promotion of exports and its corrolary:
- Expand opportunities for participation by national firms in world markets
- Promotion of small and medium size businesses
- Stopping the decline in an industry
- Economic stability or development of clusters of industry deemed strategic
- Promotion of firms controlled by historically disadvantaged persons (to become more competitive), etc.

Designation of an industry fro exemption to ensure “economic stability” is usually intended in order to allow an avenue for ministerial input about matters of industrial policy and / or national interest. Sometimes, market division arrangements could be granted for a given period and subject to conditions, in order to consolidate a given sector. Hence a difference must be made between temporary exemptions and permanent exceptions/ exclusions.

During the workshop, a couple of national industries were pinpointed as potential recipients of exemptions or exceptions (principally of forbidding horizontal arrangements and price fixing between competitors/ coepititors) such as:

1. Agriculture Sector: build up of a stronger national production base and support to national farmers in the following sectors: sugar cane, cotton, coprah, caju, castanha;
2. Fisheries and aquaculture;
3. Textile industry – which was almost reduced to nothing due to cheaper and more efficient imports from China, India , Mauritius, Turkey and other countries. A case could be supported that in order to avoid a terminal decline in this industry, a measure of protection could be warranted (industrial policy vs competition policy);
4. Protection of infant or emerging industries (to be identified further during the big workshop)

In short the future competition law will need to balance the coercitive system of prohibitions with a scheme allowing for exemptions that incorporates industrial policy and private sector development considerations. Likewise, in terms of authority, the future Commission should have the power to grand an exemption from the prohibitions against restrictive agreements or abuse of dominance. An exemption must be limited to a specified term.

## **2.2. Implications in terms of Competition Policy and Law**

The adoption of a Competition Policy by the government in July 2007 preempt to a large extend any further discussion regarding competition policy goals and general principles which were laid out carefully and in full awareness of best practices in the region and the rest of the world.

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<sup>2</sup> “How enforcement against private anti-competitive conduct has contributed to economic development – a brief overview of the South African experience”; OECD Global Forum on Competition, Feb 2004, Competition Commission of South Africa.

The main mission of the competition policy (as adopted by the government) was “to create favorable conditions for the regulation and effective implementation of good commercial practices compatible with a market economy, and discourage restrictive practices such as the abuse of dominant position, restrictive agreement (horizontal and vertical) and concentrations that results to market inefficiencies and harm to the consumer.”

The adopted competition policy calls clearly and unequivocally for the drafting of legislation and for the establishment of a competition enforcement authority.

Having said that, the Competition Policy text adopted in 2007 does state a number of social and economic objectives and general orienting principles. However when it comes to spelling out the specific principles and domains of intervention of the competition framework, we found the Policy a bit light, both on the prohibition categories (which should be 5-6 instead of 4) and also what specific anti-competitive behaviors they want to prohibit.

This open the way for getting much more specific through the legislative instrument, the Competition Law itself, which should spell out with some precision the list of restrictive agreements, anti-trust, abuse of dominance and cartels behaviors that they would seek to prevent – and also give some quantitative (market share threshold or range) or qualitative (definition of market power, price fixing, etc) pointers by which restrictive cases or mergers can be gauged.

Building up on an earlier report which recommended the drafting of a Competition Law that would focus initially on proscribing naked cartels and prohibiting mostly horizontal price fixing, we believe that the Competition Law actually go further and should cover the full range of potential anti-competitive practices, and incorporate specific provisions for:

1. General Competition Framework – norms and rules
2. Horizontal agreements
3. Vertical agreements
4. Abuse of dominance;
5. Mergers and concentrations
6. Exemptions and exceptions

A comprehensive Competition Law is warranted by a number of economic and regional factors such as:

- ***Increasing globalization and penetration of international capital and players in key industrial sectors – requiring a similar set of rule inside Mozambique as enforced elsewhere, in more advanced economies;***
- ***Compliance of Mozambique with the SADC Trade Protocol, requiring from trade members to fostering competition and prohibit unfair practices;***
- ***A growing numbers of industry cases and mergers that should have been put through the test of an review (or investigation) before being approved (Banking, beer market, cement, etc.); a legislation need to be in place soon as to be able to review the growing number of cross border mergers and current horizontal and vertical practices;***
- ***As a legal basis for advocacy, by creating a legal basis and ( through the competition authority) a structured channel for debate and consultation between the government, civil society (consumer associations, syndicates) and the private sector on issues of critical importance for the society.***
- ***One single reference text for all issues related to competition (cross-sectors)***
- ***The Portuguese and Roman Law tradition favors precise legislation and rules over common law and advocacy.***

### **3. ANALYSIS OF MOZAMBIQUE INDUSTRIAL SECTORS: COMPETITION**

#### **3.1. Competition Policy and Stages of industrial growth**

Whilst the paradigm of letting free markets forces at work over planned economies has won the world over, the need for regulating both private and public industry sectors is also growingly adopted in both the developed and developing economies.

Even in transition economies or formally State dominated economies, the state has retreated and the market forces and private players have advanced. Mozambique is actually a case in point of such transition, having inverted the share of State and Private economy ownership in the course of its 20 years post conflict recovery (only one fifth of Mozambican GDP is still state owned, whilst the State share of the economy in the early 1980s was >70% ). Mozambique has privatized more than 1,200 small and medium size enterprises and most new, incremental investments made in the key sectors of industry, mining, agriculture, and tourism comes from the private sector. <sup>3</sup>

However whenever left totally to market forces, most policy makers and consumer associations agree that a key ingredient was missing. As David Lewis, Chairperson of the Competition Tribunal in South Africa, pinpoints, “what was missing was the appreciation that the market is an institution like any other and, like any other institution, it requires a set of enforceable rules that regulate the conduct of its participants”.<sup>4</sup> That is, rules regulating the governance of corporations, rules regulating financial accountability, rules regulating the relationship between owners and employees, and finally rules that regulate the manner in which competitors interact with one another.

The renewed interest in competition policy and law is evidenced by its adoption pattern around the world. Whilst in the beginning of the 1990s, only about 15 countries or economic unions had adopted competition laws, by the early 2000s, about 90 countries had done so. Mozambique, which has implemented far reaching privatization and deregulation programs of the last 15 years, should not be left behind in that respect, and needs a Competition law and regulation of its own.

What is also relevant is that different countries, with their differing market structure and degree of dominance of state monopolies, have set out competition policy and law for differing reasons. South Africa for instance had, among other, three main concerns in mind when drafting its Competition Act: 1) opening up opportunities in the private sector to the black majority and lessening the grip of ownership of businesses by white minority; 2) regulating key sectors of the economy (Mining, beverage, banking) which was dominated by a limited number of large multinational holdings; 3) promoting (and in some cases protecting) homegrown exports and industries. The European Union saw Competition policy as one of the corner stone of establishing common rules for a common market, and encouraging healthy competition between companies and member states – whilst discouraging and in many cases prosecuting anti-competitive behaviors, cartels, horizontal and vertical agreements and abuse of dominance within the EU.

In a similar fashion, the competition law and policy for Mozambique need to answer economic, social, and industrial development concerns that are intrinsic to this country. Another dimension behind the drive to creating a competition law is the increasing integration of Mozambique in the regional trade entity known as SADC. Looking at the pattern of foreign direct investment <sup>5</sup> over the last five years (53% of which comes from South Africa, and 19% from Australia, 6% from Portugal) there is undoubtedly an international/ regional dimension to trade, investment and competition issues in Mozambique. Hence Mozambique needs also to draft a competition policy that is forward looking and effective in the context of its Austral African regional integration.

Lastly, we also need to acknowledge that competition policy priority and even enforcement institutions do change and adapt according to the relative stage of industrial development, private sector competition and diversity, and liberalization of incumbent state owned utilities. The issues that a competition regulator attempts to solve depend very much on the level of competition in each key sector of the economy.

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<sup>3</sup> (2) KPMG report on top 100 companies in Mozambique, 2005

<sup>4</sup> Competition Policy in South Africa – Where has it come and where is it going, David Lewis, Competition Tribunal, 16<sup>th</sup> May 2002.

<sup>5</sup> KPMG top 100 Company survey/ Pesquisa do setor bancario, 2005

Responding to this need adapt the law to the actual structure and need of the Mozambican economy and market (rather than the reverse) we have analyzed five of the largest sectors of the economy (Agriculture, Energy, Telecoms, retail/ wholesale commerce/ distribution, construction) to identify (a) the competition structure in each; and (2) anti-competitive behaviors, cartels, or abuse of dominance cases.

### **3.2. Sector competition analysis**

In this section we are putting competition policy in the macroeconomic and market structure context of the country.

After 10 years of sustained high economic growth, Mozambique has managed to overcome in large part the “lost years” of the civil war (1975-1992) where most of the country’s productive assets were either destroyed or at a standstill. The vigorous measures taken by the government to privatize 4/5th of its economy, create a welcoming FD Investment environment and to start deregulating, through concessions and competitive licencing, some of the State Public Services monopolies, have created conditions for vigorous growth, heightened consumer purchasing power, increased capital investment and trade flows.

Challenges still lay ahead for macroeconomic management, including uncharacteristically high inflation rates (still flirting with double digits), the big burden of fossil fuel imports (urgent need to set out an alternative energy plan), and the continued erosion of the Metical vis a vis hard currencies, imposing a heavier burden on consumer and industry alike when importing dollar denominated wheat, rice, petrol and other commodities. The reliance of Mozambique on imports for most of its basic and manufactured product is, in itself, one of the biggest challenges of this young economy, looking ahead. The generous support of donor agencies has provided additional resources to the government in order to steer social and economic reform.

Mozambique is now a small but open economy, with a growingly diversified private sector and an increased presence of large, well capitalized foreign players, which continue to invest in additional industrial capacity and new productive assets, after purchasing their way through the privatization programme of the 1990s.

It is this current structure that we investigate now as the basis for determining the level of competition level needed in Mozambique (i.e. if 90% of sectors were dominated by monopoly players, what would be needed is a liberalization program, etc.)

#### **3.2.1. Levels of Competition: cross sector analysis**

During our initial fact finding mission and also based on the UNCTD report on anti-competitive practices, we performed a quick “scan” of Mozambican industrial sectors. This scan reviews vertical sectors according to two methodologies:

- a simple “Four Stage of Competition” model, which plots the industrial sector on a scale going from “Monopoly (no competition)” down to “Liberalized sector” that is with 6 or more active competitor in the sector.
- The Five Force Competition model of Harvard Professor Michael Porter, which looks at the relative strength/ weaknesses of Suppliers, Customers, Substitutes, New entrants, and current players themselves (from Low to High)

According to our survey of key industrial sectors, the Mozambican shows a contrasting picture of “competition intensity” according to the sector chosen:

	Monopólio	Duopólio	Concorrência limitada 3 < X < 6	Liberalizado
Águas	●			
Electricidade	●			
Bebidas/ Cervejeiras	●			
Telecom.		●		
Portos/ Ferros.		●	●	
Transp. Aéreos		●		
Agricultura (Açúcar)	●		●	
Construção				
Moagem/ prod. Alimentarias			●	●

- Besides Telecommunications which has a healthy duopoly and an established regulator;
- Most Public Services utilities (Energy, Water) are still de facto Monopolies, with some initiatives to deregulate the generation and the distribution segments;
- Some sectors, such as the Beer industry and the beverage industry in general has gone from a limited competition back to Private Monopoly (with the purchase of the last independent beer maker by a subsidiary of SAB Miller of South Africa, already owner of the largest beer maker in Mozambique, CDM? M2);
- Ports and Railways (CFM and the various privatized port terminals) have gone from a Monopoly to a more liberalized regime; Different players are managing the three railways networks of the South (Maputo), Center (Beira) and North (Macala) regions. Also, in 1997, various specialty terminals were privatized, including that of Coal, Containers, and Citrus; the CFM still own and handle the four general purpose terminals, including the Sugar one;
- Agriculture which will be analyzed below, albeit having five producers of sugar cane, would be best described as an institutionalized cartel, as the government has participations in the four largest producers and control prices through the monopoly wholesale distributor DNA, controlled at 25% level by each of the four producers. Barriers to entry in this markets are still high in a sector with high potential for export growth and energy substitution;
- The industrial sector of Mills and production of wheat related products is fully competitive with 8 players competing for a limited national market; some bottlenecks do exist at the level of wholesale distribution;

A first conclusion hence is that while Mozambique needs a wide spectrum Competition law, a strong emphasis should be given to the regulation of Monopolies and the liberalization of state owned utilities and distributors. The strong verticalization of some industries is clearly an impediment to the entry of new entrants and potential investors. A corollary to this is that the future "Competition enforcement" body will have to closely coordinate actions with the sector-specific regulators, such as Telecom, Water and the (still to be created) Energy regulator.



### 3.2.2. Sector 1: Agriculture and the Sugar Industry

The Agricultural sector is starting to recover well from the standstill years of the 1970s and 1980s. In spite of occasional droughts and/ or flooding, the central and Southern regions of Mozambique enjoy an ideal climate and water conditions for the production of various agricultural commodities, including sugar cane, cotton, corn and a variety of African cereals. The mountainous areas are also ideals for fruit and citrus.

Sugar cane campaigns can last 200 days per year; productivity levels are around 60 tons per Há and the saccharose grade (Teor de acucar) in the cane reaches 15% which is almost as good as Brazilian best practices. In short with its large swat of un-exploited productive land, Mozambique is only exploiting the tip of its agricultural potential. Under ideal competition and investment conditions, Mozambique should not only be self sufficient in foodstock, it should be a sizeable exporter of agri-business commodities.

The structure of the Sugar cane industry is emblematic of the verticalization of the Agricultural sectors and points to areas where the (future) Competition regulator could enforce more efficient ways to open up the sector to new entrants and true competition practices.

70% of the production of sugar cane and sugar/ ethanol is concentrated in the hand of four medium size plantations (relative to that of Brazil or the USA), the rest being produced by small farmers. Total area planted is 29,000 Há, yielding over 2 million tons sugar cane and over 200,000 tons of sugar, of which 40% is being exported. The sector employs 26,000 workers and is deemed strategic by the government. The large farms also own the four sugar extraction plants. A fifth producer has recently entered the market (Petiz group from Portugal, mostly for alcohol production) which has rehabilitated the closed Buzi plant in the Central region. Hence the current players and owner of the sugar plants are:

**Tabela 3.1 – Participação societária das Usinas Açucareiras moçambicanas em 2005**

Empresa	Propriedade	Nacionalidade	(%)
Açucareira de Xinavane, SARL	Tongaat-Hulett Ltd.	Sul-africana	49
	Estado	Moçambicano <sup>(1)</sup>	51
Maragra Açúcar, SARL	Ilovo Sugar Ltd.	Sul-africana	75
	Estado	Moçambicano	25
Açucareira de Matambulisse, SARL	Tongaat-Hulett Ltd.	Sul-africana	75
	Estado	Moçambicano	25
Companhia de Sena, SARL (Marromeu e Luabo)	Sena Holding Co.	Mauritiana	87
	Estado	Moçambicano	13
Companhia do Buzi, SARL	Familla Petiz	Portuguesa	100

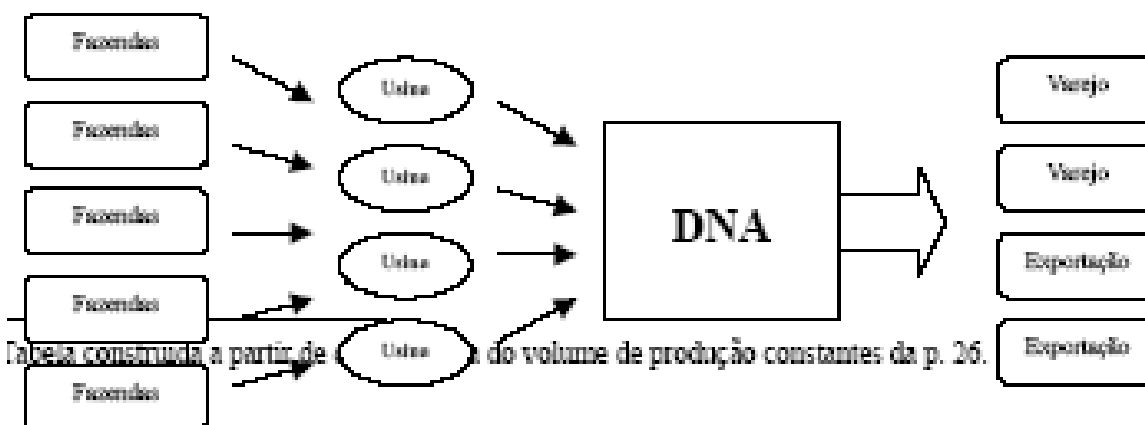
Fonte: Açucareiras de Xinavane, Maragra, Matambulisse, Marromeu e Buzi.

Nota: 1. A Tongaat-Hulett Ltd. tem o direito de opção quanto a 11% das acções pertencentes ao Estado de Moçambique.

Where verticalization of the sector truly occurs is at the level of wholesale distribution. The distribution of sugar is controlled by the “Distribuidor Nacional de Acucar” (DNA) an organism created in 2002 which centralizes wholesale distribution both for the internal and the international export markets. The four main producers of sugar each have 25% of the social capital of DNA. The rationale used by the government for the creation of DNA was in order to diminish costs and increase returns of producers due to better economies of scale at the level of distribution.

*The competition structure of the Sugar sector is resumed in the following business flow:*

**Figura 3.1: Fluxograma de Negócios do Setor de Açúcar – Moçambique<sup>48</sup>**



Two competition issues are being raised by the sugar sector structure and also by the strong participation of the State in the production and distribution assets:

1. The strong verticalization of this industry , with the same players owning the agricultural production, the sugar transformation and also the distribution assets can have a direct impact on the decision by new entrants or investors to enter in the Mozambican market; Particularly the absence of another/ others wholesale distributors will raise the cost of entry by new players.
2. The strong hand of the Government, through its partial control of the DNA distributor and also the fact that the prices of sugar and alcohol is largely dependent from the pricing decisions made by DNA can create inefficiencies both at the level wholesale as well at the level of the prices paid by the end consumer.
3. In conclusion the sugar industry is not yet fully competitive,, nor fully efficient, and shows concentrations and verticalization that warrants action by the future competition enforcement structure.
4. The potential conflict of interest between government interests in the sugar production cycle and liberalization of the sector can be overcome by the fact that the potential economic benefits of a fully competitive sugar industry, producing and exporting at a larger scale would outrun the short term rent of vertical agreements.

### **3.2.3. Sector 2: Telecommunications and media**

The Telecommunications is actually a sector which has made good advances in the path towards full competition. Current sector structure shows a healthy duopoly structure between two well capitalized international players (TDM –Visabeira Group and Portugal Telecom); and Vodacom (Telkom of South Africa and Vodafone of the UK). Further liberalization is under way, supervised by an independent regulator, the National Institute of Communications of Mozambique (INCM).

The first inroad towards establishing a modern telecommunication service was made in 1995-97 when a partnership was established between Telecomunicacoes de Mocambique (TDM), the incumbent state operator and Detecom GmbH of Germany, which joined forces to create Telecomunicacoes Moveis de Mocambique (TMM), the first cellular network of the country which was launched (in Maputo at first) in September 1997. Through the introduction of pre-paid services (Giro) in 2000, the number of customers shoots up from 20,000 to 436,000, allowing further investments in network coverage and customer services throughout the country.

During the later part of the 1990s, the government of Mozambique introduced important modifications in the regulation and competition structure of the sector. The sector regulator (INCM) was created, a new legal framework for Telecommunications was adopted, and the government liberalized a key segment, that of mobile communications services, opening a tender for a second GSM operator in the country. This tender was well managed, over 12 national and international consortia applied for it, and Vodacom eventually won

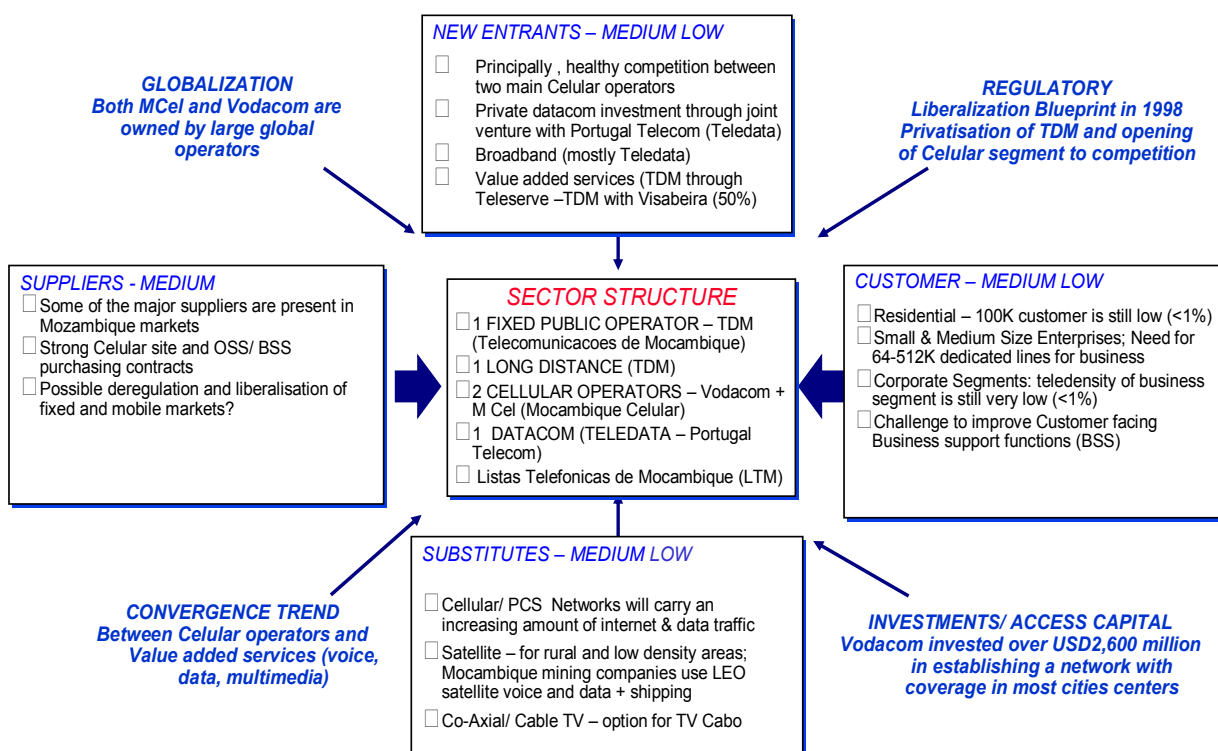
the tender and became the second GSM/ PCS operator for the country. In total this new entrant in the market invested a total of more than US\$2.5 billion to create a new network, with national coverage (main cities at first). The objective was clearly to compete head on with M Cel (the new name for TMM) on the three main competition field: coverage, prices and service.

The current duopoly structure between M Cel and Vodacom is warranted by the market size of Mozambique (population and GDP per capita of targeted segments) and creates the conditions for a healthy competition at all levels. With the increased purchasing power of the urban Mozambicans and with a critical mass of corporate customer, it may be that the regulator may decide to open up a new segment of the telecommunications value chain – either in the provision of fixed or specialized data communications services, 2<sup>nd</sup> Cable TV operator, and / or more advanced mobile services (2<sup>nd</sup>+ or 3G).

The main challenge in terms of industrial policy is to increase the number of fixed line in the country which, with less than 1% of teledensity is at the very bottom of the world chart (Morocco for instance has a fixed line teledensity (number of line per 100 inhabitants) > 20%). The availability of fixed line is relevant for the development of broadband services such as ADSL, high speed internet and also internet telephony – all services that are highly relevant for the construction of a modern service economy.

In the graphic below we have analyse the current competitive structure of the Telecommunications sector in Mozambique – with each of the Five Forces showing the relative strength and intensity of each player (from LOW to HIGH). For instance we believe that the current relative strength of substitute means of communications in Mozambique is still infancy, with limited satellite and marine cable services. The score is therefore Medium Low in the competitive scale. The supplier market is Medium as most major equipment suppliers were invited to tender for the provision of the two main cellular networks.

*Graphic - Sector 2: Competitive structure of the Telecom Sector in Mozambique) (\*)<sup>6</sup>*



When one looks at the range of services provided by the incumbent and now privatized public telecommunications operator (PTOs), TDM, one can see that it has still a majority market share over the full range of communications and media services. The key difference with other public services (Energy and

<sup>6</sup> Copyright, Yves Speeckaert/ Michael Porter – competitive analysis of industrial sector, 2008

Water) is that TDM do face a strong, highly competitive second operator in the key segment: Mobile telephony (Vodacom).

Below is the structure and the various subsidiaries of Telecomunicacoes de Mocambique (TDM) which shows still all evidence of a “dominant player” in the fixed, data, and cable TV segment.

**Tabela 1.2: Grupo TDM- Estrutura**

Companhia	Acionistas	Core Business
Moçambique Celular	TDM	Operador de telefonia móvel
TV Cabo	TDM (50%), Visabeira Group (50%)	Implementação e provisão de serviços de televisão a cabo
TELEVISA	TDM (50%), Visabeira Group (50%)	Instalação, supervisão e manutenção de redes de telecomunicação (incluindo redes de fibra óptica), bem como desenvolvimento e implementação de sistemas de comunicação.
TELESERVE	TDM (50%), Visabeira Group (50%)	Comercialização de soluções de inteligência em telecomunicações: PABX's e RDIS.
TELEDATA	TDM (50%), Portugal Telecom (50%)	Operador de serviços complementares de telecomunicações, oferecendo serviços integrados (transmissão de dados, comunicações nacionais e internacionais, etc).
Listas Telefônicas de Moçambique (LTM)	TDM (50%), Portugal Telecom (50%)	Edição e publicação de listas telefônicas, bem como mapas de Maputo e Moçambique.

Fonte: Telecomunicações De Moçambique (TDM)

In conclusion, the Telecommunications sector can be seen as a “best practice” of liberalization of a key public service in Mozambique. The progressive but decisive deregulation of the mobile telephony segment resulted in significant investments being made in basic and service infrastructure and as a result the number of users shoots up from 12,000 to over 1.5 million users by end of 2005. The duopoly structure between equals (in terms of access to capital, best international practices in core Business Support Services (BSS) and Operational Support Services (OSS) processes, and marketing, shows all the evidence of a healthy competition whose ultimate beneficiary is the customer.

The evidence of such competition is shown in the relative market shares: 60% of the 1.5 million customers are operated by mCel (TDM) and 40% by Vodacom. It only takes few hours, riding in the street of Maputo or Beira to see this competition at work, given the high advertising visibility of both firms.

As always in Africa, the Telecom sector is usually the first public infrastructure to be liberalized and deregulated. However with surging petroleum and energy prices, this “best practice” can be emulated in the Energy sector for instance, as has been done in Brazil, the EU and a number of Asian countries.

The key findings that we draw from the Telecommunications sector in term of Competition advocacy and regulation are as follows:

1. The true spark for the growth and capital investment in the Telecom sector has been the opening of a key segment to competition (2<sup>nd</sup> mobile licence) and also the creation of an independent sector regulator (in 2002);
2. The creation and continued watchdog role of an independent sector regulator has been also key to the healthy and regulated growth of the sector, and putting pressures on the two operators to increase service levels (coverage, range of services, CRM) whilst maintaining a competitive pricing structure;
3. Based on this first success, the INCM can reasonably look at liberalizing and/ or opening up other segments to competition.
4. The key to attract world class international investors is a clear set of rules and legislation for the sector, and clear license conditions. Regulation in this sense is an anchor rather than a deterrent to achieving competitive markets
5. As in other countries, coordination between the Competition authority and Sector regulators will be very important.

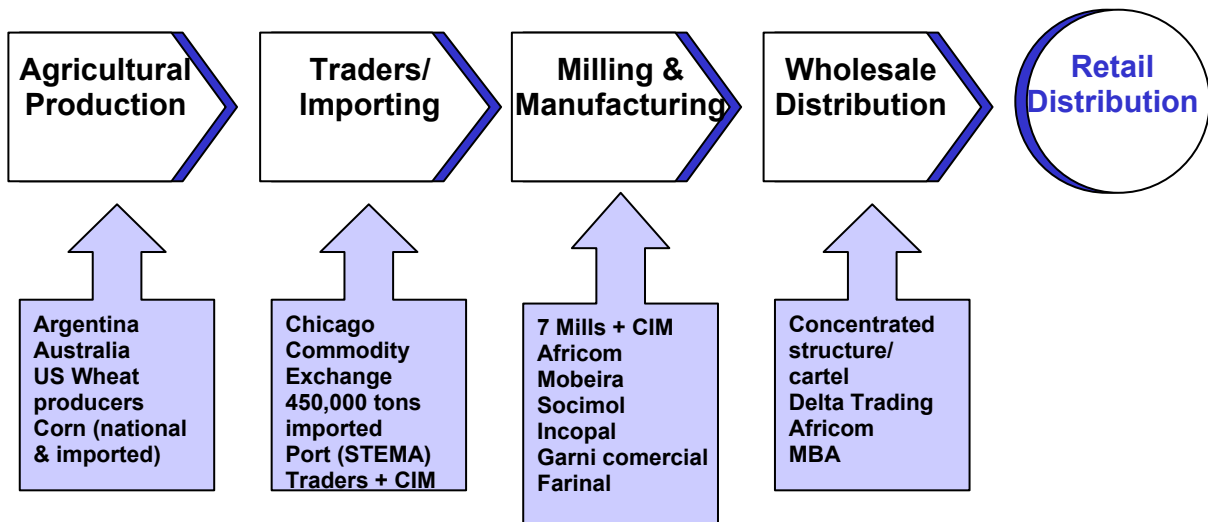
### 3.2.4. Sector 3: Wheat and bread production and distribution

The Third sector that we undertook to analyse is the bakery and wheat related products production and distribution. In the course of investigating the Mills and Wheat production sector, the ACE consulting team interviewed with key members of CIM (Companhia Industrial da Matola), one of the leading player in the Milling and bakery product segment (wheat and corn flour, biscuits, pasta), including the directions of operations, sales, general counsel, etc.). The management of that company was most cooperative and open to discuss all aspects of the Food industry, including its structure, level of investments, financing (and access to debt and equity capital in Mozambique), distribution and the pricing of retail products relative to international commodity prices.

The Food & beverage industry is relevant for competition analysis as it is both very sensitive to variations in international food commodities and also to the formation of cartels along its production value chain – particularly at the wholesale distribution and/or retail distribution level. Any horizontal or rent seeking arrangements at the beginning (import service and duties) or at the end of the value chain (collusion or cartel between wholesalers) can have significant impact on food prices which is already a socially sensitive issues the world over. However it is important to be careful in the value chain analysis and avoiding pointing finger at any link of the chain before having solid evidence to show for it.

In order to analyze the Milling and bakery sector, we used a value chain analysis methodology, which simply identify and analyze each step along the production chain, from commodity production (imported or national) down to retail distribution to the customer.

*Value chain analysis of the wheat product import, transformation and distribution (1)<sup>7</sup>:*



An initial analysis of the wheat milling and bakery product manufacturing yielded the following findings from a competition point of view – this analysis need to be validated through further primary data gathering and interviews:

1. Mozambique is still extremely dependent on agricultural imports, especially for key commodities such as wheat, rice and corn;
2. Since the international commodity prices for wheat have increased by almost 100% over the last two years (Argentinean wheat has increased from US\$220 up to 460), countries that are very dependent on imports of grain do suffer, and prices increases are repassed at the trader and import levels;
3. Grain storage in Mozambique (silos) are dominated by a few entities,, including the state owned STEMA port authority which gets a “grain handling fee”, as well as by the Mills themselves (CIM do have their own silos with roughly the capacity needed to handle their through flow;

<sup>7</sup> Yves Speeckaert, ACE Consulting – value chain analysis of the bakery Food segment, 2008

4. The grain crushing (Mills/ Moagem in Portuguese) and the manufacturing of finished consumer products is actually a very competitive market with 7 identified players, some of these national and other international. There seem to be a healthy competition between brands which compete in a differentiated way at the mass market level and other, B & C segment levels.
5. The fourth link of the production value chain is where the bottleneck seems to occur. Wholesale distribution of bread, pasta, flour, biscuits and other basic food commodities is dominated by very few players (Delta trading, Africon, etc.) who tend to show cartel like behavior and are suspected to collude on pricing.
6. Retail distributors, whether large chains such as Shop Rite and Luis or the large, competitive informal distribution sector, depend entirely on the wholesale price for determining the final retail prices for products.

As the government and the public (including Consumer Associations) are concerned by the large increases in Food and consumption prices, one of the roles of the future Competition Authority is to investigate where are the bottlenecks, and eventual horizontal or vertical agreements that may exist in this socially sensitive sector.

### **3.2.5. Sector 4: Energy Production, Transmission and Distribution**

Another key sector of the economy which warrants review is the Energy sector and more specifically the Generation, Transmission and Distribution of electricity.

The electricity and energy production is a vital sector for a modernizing economy. Particularly in Mozambique with the growing need of its developing economy, and also with its large potential for additional power generation, the issue of developing the Energy sector to its fullest potential is critical for the economy of the country.

The Ministry of Energy has on its desk (and in advanced stage of feasibility study and / or imminent construction launch) close to USD5, 700 million of investment projects planned for a number of industrial scale production projects, amongst these:

1. 1,300MW Hydroelectric Dam called the Mphanda Nkunda project in the Province of Tete; the work should start in 2009 and due to completion in 2014. This would increase Mozambique total generation capacity by a full 50%. Almost half of this production is earmarked for the expansion of the Mega Aluminum plant (Mozal III) nearby Maputo – necessitating the build up of a Transmission network estimated at over US\$2,000 million (linking the center of the country to Maputo); the other 650Mw should be exported (Zimbabwe, Zambia mainly);
2. 700MW Thermal Gas Turbine plant is planned based on the large gas fields of Pande/ Temane. The most likely scenario is that 80% of that electricity will be exported to South Africa, with about 100MW ultimately acquired and distributed by EDM. Another application of this new source of power may be applied to exploit the Heavy Sands projects of Chibuto (Mozambique);
3. Possibility of building up a 1,500 MW Coal Thermal generation plant based on the mining of mineral coal mine of Moatize (by CVRD, now known as Vale, from Brasil). 10% of that electricity will be used by the mining activities themselves, the rest being available mostly for export.

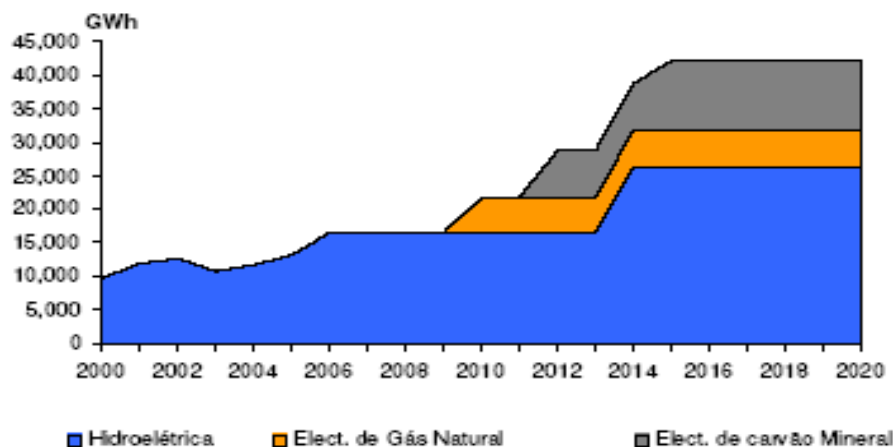
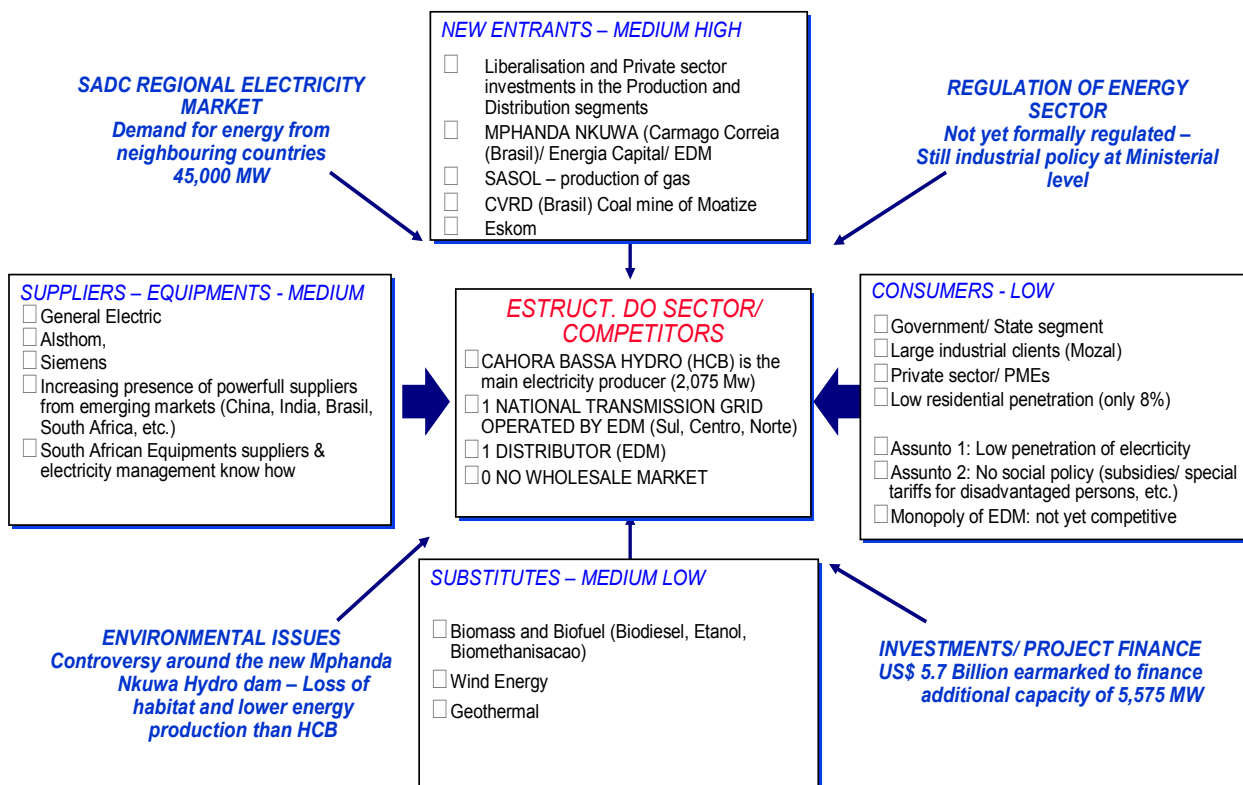


Figura 1. Produção de Electricidade

It should be noted that from a regional standpoint, there is an optimum supply and demand fit between the growing hunger for electricity from fast growing neighboring countries, chief among all South Africa on the one hand, and on the other the industrial plans for capacity increases by Mozambique. These capital intensive plans are supported by an increasingly daring international investment community (and rewarding 15 years of lasting and steady macroeconomic and legal reforms in Mozambique).

Graphic S. 4: Competitive structure of the Energy sector in Mozambique (Five Forces) (\*)<sup>8</sup>



<sup>8</sup> Copyright, Yves Speeckaert/ Michael Porter – competitive analysis of industrial sector, 2008

On the other hand current social and utilities penetration rates are still showing the scars of a slowly recovering post conflict economy. In 2005, only 8% of the total population had access to electricity and the rural distribution network is still very limited. Actually 80% of the population still depends entirely from wood produced traditional biomass in order to heat their food and for their energy necessities.

From a competition regulation standpoint, EDM, the incumbent, state owned energy company, is still a Monopoly as the majority of electricity generated today in Mozambique is produced and distributed by Electricidade de Mocambique (EDM) – which formally acquired the assets of the Hydro Cahora Bassa (HCB) major plant from Portugal.

A couple of emerging trends are pointing to a gradual “free handed” liberalization of the energy sector dictated mostly by the large amount of capital investment needed to mount large project (mostly through Project Finance, BOO and also through PPP such as the Mphanda Nkuwa Hydro plant):

1. Large, well capitalized global firms are entering into the Production segments (Camargo Correia, Sasol, Suez, CVRD, Eskom, etc.);
2. About 80% of the planned electricity is aimed at the export market, providing Mozambique with much needed foreign currency earnings to balance the current balance of payment deficit;
3. The Substitution market, based on the large potential of Mozambique agriculture to produce Bioethanol and biodiesel to substitute fossil fuels and imports is still at its infancy, although two projects have been approved recently (not yet operational though). These should be encouraged strongly as it would make the energy and fuel market much more competitive – and also could be another source of foreign direct investment in the country + lessening Mozambique dependency and huge bill on petroleum products.
4. Consumer are almost totally neglected in this equation, and have little or no power to bargain vis a vis the dominant player -

As a conclusion on the Energy sector, Mozambique would certainly benefit for formalizing the deregulation and liberalization of its energy sector by (a) creating an Energy sector regulator which could discipline and recommend actions to liberalize segments of the markets; and (b) progressive opening of the production and distribution segments to competition.



## 4. LEGAL REVIEW

### 4.1 Introduction

The widespread processes of economic liberalization together with privatization in Africa have paved the way for a large restructuring process of the local economies. Indeed, a competition regime is essential for the development and consolidation of the weak private sector in the Continent. Before that, the African economies were characterized by concentrated markets and highly monopolistic systems.

The competition legal system was often built in a way to support these monopolistic systems. Indeed, for the exception of Senegal that adopted the first competition law in 1965, no other African country incorporated competition in its own legislation.

Although this new deregulation and liberalization trend demonstrates that the issue is becoming increasingly important, competition framework are still a rare and new phenomenon for Africa. According to data provided for by the World Bank<sup>9</sup>, amongst forty six African countries, only fourteen adopted competition legislation, namely Burkina Faso, Cameroon, Cape Vert, Cote D'Ivoire, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Senegal, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

The issue of competition has been similarly, although slowly, adopted at the regional level:

- a) COMESA has drafted Rules and Regulations in 2003, but these still have to be adopted and implemented;
- b) SADC included in the Trade Protocol provisions recommending Member States to adopt legislation and to establish competition authorities.

Further to that recommendation, the SADC countries embarked in the process of drafting and implementing policy and legal frameworks on competition. In fact, among the fourteen SADC countries at least nine countries have already adopted competition laws. More precisely:

- Three countries, namely: South Africa, Zambia and Zimbabwe possess a fully operational regime made by a competition law and a competition authority;
- Three other countries have solely enacted legislation on competition, namely: Malawi, Namibia and Tanzania;
- Three additional countries are actively preparing competition legislation, among them: Botswana, Mauritius and Swaziland; and finally
- Five countries are still at the early stage or had not started at all the process: Angola, the Democratic Republic of Congo, Lesotho, Mozambique and the Seychelles<sup>10</sup>.

The process of regional integration has reached a new stage on 2008 in the SADC region. It is putting a deadline in terms of harmonization of policies and regulations among the Member States. Furthermore, the flow of investments and cross border transactions among them will increase the levels of competition thus, claiming for its regulation.

Therefore, the SADC Member States still lacking of policies and regulations on competition such as Mozambique will have to accelerate the process in order to avoid the negative impacts of wild competition or neighboring countries dictating its own competition policy.

It should be emphasized that as it will become clear later on, Mozambique has moved a step ahead adopting a competition policy on July 2007 calling for legislation and establishment of a competition authority<sup>11</sup>.

Furthermore, the Mozambican Constitution is open to free economic initiative, equal treatment of national and foreign investors and underline the leading role of the State on economic regulation. However, no express reference is made on competition. Although, some legislation is provided for in highly competitive areas such

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<sup>9</sup>Competition Law Database (online) available at [www.worldbank.org](http://www.worldbank.org)

<sup>10</sup> Pryor, A. and Howe, M., A Competition Policy Model for the Southern African Development Community, SADC, Gaborone, 2001

<sup>11</sup> Cabinet Resolution nr° 37/2007 of the 20<sup>th</sup> July

as telecommunications or in some vital sectors such as water, electricity and banks, there is no express reference to competition regulation.

One relevant exception refers to the telecommunication area: The Telecommunications Act<sup>12</sup> provides expressly (article 3) for the need of establishment of rules aiming at advancement of competition among the operators and creates the National Institute for Communications with the objective of promotion of competition and to act against anti-competitive practices.

It seems then that internal dynamic of the economy, the regional recommendations inserted in the SADC Trade Protocol, the trend of the SADC and the challenges poised by the regional integration suggests that the lack of legislation related to competition in Mozambique is a serious shortcoming that must be addressed.

## 4.2 Competition regulation in Africa

Immediately after independence the African economies were characterized by centrally planned structures, state owned monopolies (both natural and legal). The role of the State was both to regulate and to intervene as an actor in the economy. Thus, competition was not a priority for most governments, the role of the State being more related to the satisfaction of the basic needs of the population (with varying degree of success).

The African States were driven by the global belief that the realization of those objectives was better safeguarded by the direct intervention of the State in the Economy (both in Western or Eastern African States)<sup>13</sup>.

The market-oriented economy and policies of the 1990s dismantled and/ or reduced somehow the State intervention in the economy, enhanced participation of private sector in key sectors of the economy and attracted more foreign investors. The participation of these new actors in the economy yielded a situation characterized by competition.

However, the change in terms of economic orientation was not followed by adequate regulation able to face the challenges posed by the new circumstances<sup>14</sup>. Indeed, before the structural reforms undertaken all over the continent in the 90's only two countries had competition rules: Senegal (1965) and South Africa (1979) although more concerned with price fixation or to advise the Government on issues related to competition<sup>15</sup>.

This initial lack of interest in competition issues and regulation suddenly changed at the beginning of the nineties: at least 90 countries adopted competition legislation all over the world, among them ten were African.

According to data provided for by the World Bank<sup>16</sup>, currently among 46 existing African states, fourteen have adopted competition legislation, namely Burkina Faso, Cameroon, Cape Vert, Cote D'Ivoire, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Senegal, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

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<sup>12</sup> Lei das Telecomunicações – Lei nº 8/2004 de 21 de Julho

<sup>13</sup> Kappel, K. The role of South African Competition Law in supporting SMEs, in 48<sup>th</sup> ICSB World Conference "Advancing Entrepreneurship and Small Business", 15-18 June 2003, Belfast, Northern Ireland (available at [www.comptrib.co.za/publications/speeches/kim.pdf](http://www.comptrib.co.za/publications/speeches/kim.pdf)): "South Africa has a unique economic history. Its exclusion from world markets for many years resulted in the development of an extremely protected economy during the earlier part of the 20<sup>th</sup> century. Government concessions, including subsidized inputs in industries such as manufacturing and agriculture, together with strict market controls, high tariffs, low levels of foreign direct investment and high levels of government ownership, have over the years, contributed to the creation of a highly concentrated economy."

<sup>14</sup> Lewis, D., Competition Policy in South Africa – where has it come from and where is it going?, Johannesburg, 2002 (at [www.comptrib.co.za](http://www.comptrib.co.za)): "The State has retreated and the market had advanced but a key ingredient was missing. On reflection, what was missing was a set of rules...the market is an institution...it requires a set of enforceable rules that regulate the conduct of its participants..."

<sup>15</sup> Competition Tribunal of South Africa, Challenges/Obstacles faced by Competition Authorities in Achieving Greater Economic Development through the Promotion of Competition, OECD Global Forum on Competition, February 2004 (at [www.comptrib.co.za](http://www.comptrib.co.za)): "Although a competition statute had been in existence for several decades, the enforcement agency was poorly resourced and its formal powers were, for the most part, limited to advising government."

<sup>16</sup> Competition Law Database (online) available at [www.worldbank.org](http://www.worldbank.org)

### 4.3. Competition regulations at the regional level

#### i) SADC area<sup>17</sup>

Among the fourteen African countries indicated above, nine are SADC Member Countries. That means similarly that at least nine among the fourteen SADC Members Countries have already adopted competition laws. More precisely:

- Three countries, namely: South Africa, Zambia and Zimbabwe possessed a fully operational regime made by a competition law and a competition authority;
- Three other countries had solely enacted legislation on competition namely: Malawi, Namibia and Tanzania;
- Three additional country were actively preparing competition legislation, among them: Botswana, Mauritius and Swaziland; and finally
- Five countries, which were at the early stage or had not, started at all the process: Angola, the Democratic Republic of the Congo, Lesotho, Mozambique and Seychelles<sup>18</sup>.

Three main reasons may rest behind such a great interest on competition regulation in the SADC region:

- a) The establishment of the market-oriented systems in all the southern African countries and the privatization process;
- b) the end of apartheid in South Africa and its integration in the SADC contributing with its long and consolidated experience in competition regulation, including a competition authority;
- c) the Recommendation made by the SADC Trade Protocol (art. 25): *“Member States shall implement measures within the Community that prohibit unfair practices and promote competition”*

It may be expected that the process of regional integration will further enhance the need for competition regulation in order to allow member States to:

- a) Implement the regional recommendations inserted in the SADC Trade Protocol;
- b) Prepare member States to adequately face the challenges posed by the new dynamism in the economy thus, the competition environment.

#### ii) COMESA area<sup>19</sup>

The final objective of cooperation in Trade, Customs and Monetary Affairs in the COMESA sphere is to achieve a fully integrated, internationally competitive and unified single economic space within which goods; services, capital and labor are able to move freely across national frontiers. The unified economic space with the four freedoms – goods, services, capital and labor encompass among other elements a competition policy and other measures aimed at strengthening market mechanisms.

The founding Treaty of COMESA recognizes that rules on competition are needed to strengthen the process of economic integration by enabling action to be taken against business conduct that would jeopardize the benefits of an increasingly wide and open market within COMESA region. Article 55 of the Treaty, headed Competition, states: *“1. The Member States agree that any practice which negates the objective of free and liberalized trade shall be prohibited. To this end, the Member States agree to prohibit any agreement between undertakings or concerted practice which has as its object or effect the prevention, restriction or distortion of competition within the Common Market...3. The Council shall make regulations to regulate competition within Member States.”*

COMESA has drafted Competition Rules and Regulations in 2003. However those rules and regulation still have to be adopted and implemented.

Although the regional legal instruments make reference to competition and instruct the Council to create regulations within Member States, among the 19 Member States only six countries provide for legislation on

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<sup>17</sup> SADC include the following 14 Member States: Angola, Botswana, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe.

<sup>18</sup> Pryor, A. and Howe, M., A Competition Policy Model for the Southern African Development Community, SADC, Gaborone, 2001

<sup>19</sup> 19 Member States constitutes COMESA: Burundi, Comores, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe.

the matter, namely: Ethiopia, Kenya, Malawi, Mauritius, Zambia and Zimbabwe. It should be emphasized that the later four countries are concurrently SADC Member States.

The founding principles of COMESA establishing express commitment with the competition system together with the current efforts to adopt rules and regulations in the region and the current trend in African countries will certainly drive COMESA to establish a competition system.

### *iii) East African Community area*

The Protocol on the Establishment of an East African Community Customs Union signed on 2004 by Kenya, Tanzania and Uganda contains similarly provisions on competition policy. The Protocol imposes to the Member States the obligation to prohibit any practice adversely affecting free trade within the Community, including agreements or concerted practices that prevent, distort or restrict competition.

There's a Draft Community Competition Bill still under discussion. At the Member States level, all the three members has already Competition Legislation although there's still for harmonization and update.

### *iv) Southern African Customs Union (SACU)*

The Agreement between the four SACU Member States namely Botswana, Lesotho, Namibia, South Africa and Swaziland contains two relevant articles:

- art 40 (Competition Policy) expresses the agreement of Member States that there should be competition policies in each member State and obliges the Member States to co-operate with each other with respect to the enforcement of competition laws and regulations;
- art 41 (Unfair Trade Practices), obliges the Council of SACU to develop policies and instruments to address unfair trade practices between Member States.

At the Member States level only Namibia and South Africa has enacted legislation on competition, being South Africa the leading country in the continent in terms of implementation of a Competition System.

In conclusion all the regional economic blocs provide for provisions stating a clear commitment of each organization in the promotion of competition among the Member Countries. The Commitment is provided for at the legal highest level forming part of the Constitutive instrument or annexed to it.

The Competition Provisions place an obligation either to its organs or to the Member States to develop policies or legislation aiming at the promotion of the competition in the region or in each Member State.

The Regional Bills or Policies on Competition are still under discussion and, for the exception of the SADC; the majority of the countries still have to develop its own regulations.

The East African Community represents the region where all the Member States possesses Competition Laws, although lacking harmonization and update.

The SADC region shows also a positive trend in the implementation of the Competition Systems at the Member States level. Thus, the accelerated pace of the regional integration place the countries that still have to develop their own policies and regulations in a disadvantageous situation in relation to the other Countries.

## **4.4. The content of the competition legislation in the African Countries**

### *i) The objectives of the competition rules or regulations*

Competition is not an end in itself. Thus, the objectives of the competition regulations are not only restricted to the promotion of competition among rivals but most importantly to enable the optimal allocation of scarce resources of the economy to their most efficient use. Competition enhances efficiency of the producers, increases employment opportunities, improves quality and lowers the prices for the overall protection of the local entrepreneurs while safeguarding foreign investors for the benefit of the consumers<sup>20</sup>. At the end, Competition aims at promoting welfare and economic growth and prosperity.

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<sup>20</sup> The Draft Competition Regulations (article 1 – definitions) establishes that “Competition...results in greater efficiency, high economic growth, increasing employment opportunities and lower prices and improved choice for consumers”

The analyses of many of the jurisdictions providing for competition regulations in Africa, confirms this assumption. In particular and more clearly the Memorandum on the Malawian Competition and Fair Trading Bill of 1998 states that the Bill aims at encouraging competition in the economy by prohibiting anti-competitive trade practices. The fundamental objectives of the Bill include:

- (a) the establishment of an appropriate mechanism to regulate monopolistic and anti-competitive trade practices including specifically resale price maintenance, mergers and acquisitions and restrictive trade practices such as collusion and price fixing;
- (b) deterrence of unfair trading practices and provide protection of consumers; and
- (c) implementation and monitoring of policy issues and establishment of enforcement mechanisms.

The Zambian Competition Act objective is to “*encourage competition in the economy by prohibiting anti-competitive trade practices, to regulate monopolies and concentrations of economic power, to protect consumer welfare, to strengthen the efficiency of production and distribution of services (an products?), to secure the best possible conditions for the freedom of trade, to expand the base of entrepreneurship...*”

On the other side the Competition Act 1998, South Africa establishes that the purpose of *the Act* is to promote and maintain competition in the Republic in order –

- to promote the efficiency, adaptability and development of the economy;
- to provide consumers with competitive prices and product choices;
- to promote employment and advance the social and economic welfare of South Africans;
- to expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;
- to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and
- to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.

On the same path and echoing the South African Law the Namibian Competition Act No 2 of 2003 identify the purpose of the Act as to enhance the promotion and safeguarding of competition in Namibia in order to –

- (a) promote the efficiency, adaptability and development of the Namibian economy;
- (b) provide consumers with competitive prices and product choices;
- (c) promote employment and advance the social and economic welfare of Namibians;
- (d) expand opportunities for Namibian participation in world markets while recognizing the role of foreign competition in Namibia;
- (e) ensure that small undertakings have an equitable opportunity to participate in the Namibian economy; and
- (f) promote a greater spread of ownership, in particular to increase ownership stakes of historically disadvantaged persons.

#### *ii) the prohibited anti-competitive practices*

The regulations cover the traditional subject law of a competition act and especially regulate issues related to:

- a) Restrictive horizontal practices – e.g: fixing a purchase or selling price or any other trading condition; dividing markets by allocating customers, suppliers, territories, or specific types of *goods or services*; or collusive tendering;
- b) Abuse of dominant position – which consists in the elimination or damage of a competitor, prevention to the entry of a person into the market; or prevention of a person from engaging in competitive conduct;
- c) Control of mergers – aiming at prohibiting mergers or takeovers that result in a presence into the market that goes beyond a determined threshold.

#### *iii) Protection of consumers*

The modern legislations on competition realize the fundamental objective of promotion and protection of the welfare of the consumer by providing some provisions in the Act.

Usually the consumer is given protection, against—

- (a) excluding liability for defective goods;
- (b) claiming payment for unsolicited goods or services;

- (c) engaging in unconscionable conduct in carrying out trade in goods or services;
- (d) engaging in pyramid selling;
- (e) engaging in bait selling
- (f) offering gifts or prizes with no intention of supplying them; or
- (g) putting out an advertisement which is misleading or deceptive

#### *iv) Authorizations (exemptions and exceptions)*

Like other systems, the African legislations, allows a mechanism to authorize some prohibited acts or anti-competitive merger if the act aims at:

- a) creating a substantially more efficient unit with lower production or distribution costs;
- b) increasing or maintaining exports;
- c) increasing employment;
- d) lower the prices;
- e) accelerate economic and/or technological development of the national enterprises;
- f) promotion of the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive;
- g) change in productive capacity necessary to stop decline in an industry; or
- h) the economic stability of any industry<sup>21</sup>.

In the context of the African countries special attention must be paid on the importance of providing authorizations in some cases. The situations whereby authorizations may be granted should be carefully identified in order to most adequately address the local interests. Issues like incentive to SMEs, disadvantaged people or areas, acceleration of technical development or promotion of local production are of crucial importance. An exhaustive analysis of those objectives must be conducted in order to feed into the law.

## **4.5. Competition regulation in Brasil and Portugal**

Mozambique achieved its own independence from Portugal in 1975. Due to that influence, the Mozambican legal system follows the civil law system adopted historically by Portugal. Hence, in order to understand the competition system in Mozambique and also the Roman Law tradition in force in the legal system (as opposed to Common Law approach which imprinted the legal system in Zambia and Zimbabwe), it is quite important to undertake an overview on the current situation in the other lusophone countries <sup>22</sup>.

Among the lusophone countries only Brazil, Cape Verde and Portugal have adopted competition laws.

### **(i) Competition in Brazil**

The first competition law was enacted in Brazil in 1962 (Lei nº 4137) which contemporarily created the Competition Authority named “Conselho Administrativo de Defesa da Concorrência” (Administrative Council for the Defense of Competition) – CADE 23. However CADE had marginal economic impact because its authority extended only to private firms. In 1988, coincident with a series of significant economic changes in Brazil, a new constitution established competition as a key feature of the “economic order.” A privatization program was launched, barriers to international trade were reduced, and CADE became more active<sup>24</sup>.

In 1994 following a series of reforms, a new competition law (Lei nº 8884) was enacted. The new law also introduced merger control and made important institutional changes. CADE was re-configured as an independent agency, and certain aspects of enforcement authority were vested in two other agencies: the

<sup>21</sup> See for the three last case the South African Act 1998 Section (10) (3) (b)

<sup>22</sup> Angola, Brazil, Cape Vert, Guiné-Bissau, Mozambique, Portugal, São Tomé e Príncipe and Timor East forms a group of countries united by the same language, known as lusophone countries. The said countries geographical located as follows: Brazil in latin America, Portugal in Europe, Timor East in Asia and the remaining five in Africa.

<sup>23</sup> The competition law establishes CADE as an autonomous agency consisting of a President and six Council members (or commissioners) appointed by the President of the Republic and approved by the national Senate for terms of two years, with the possibility of reappointment for one additional term.

<sup>24</sup> OECD, Competition Law and Policy in Brazil – A Peer Review, 2005, Paris

Secretariat of Economic Law in the Ministry of Justice (Secretaria de Direito Econômico do Ministério da Justiça or “SDE”)<sup>25</sup> and the Secretariat for Economic Monitoring in the Ministry of Finance (Secretaria de Acompanhamento Econômico or “SEAE”). Collectively, the three agencies comprise the Brazilian Competition Policy System (Sistema Brasileiro de Defesa da Concorrência or “BCPS”)<sup>26</sup>.

The substantive provisions of Brazil’s competition law appear in three articles<sup>27</sup>. Articles 20 and 21 deal with all types of anti-competitive conduct other than mergers, whilst mergers, acquisitions, and similar transactions are addressed in Article 54. Article 20 provides that “any act in any way intended or otherwise able to produce the effects listed below, even if any such effects are not achieved, shall be deemed a violation of the economic order”. The specified effects are:

- to limit, restrain or in any way injure open competition or free enterprise;
- to control a relevant market of a certain product or service;
- to increase profits on a discretionary basis; and
- to abuse one’s market control.

Article 21 contains a lengthy but non-exclusive list of acts, including various kinds of horizontal and vertical agreements and unilateral abuses of market power, that are considered unlawful if they produce the effects enumerated in Article 20.

Although the current Competition Policy System is achieving remarkable results, there’re a number of incongruence and inefficiencies that have to be addressed. Therefore, three pieces of proposed legislation designed to re-model the competition law system in Brazil are pending in the Parliament.

The proposed changes encompass, among others<sup>28</sup>:

- combination of SDE with CADE;
- add new institutional elements to CADE’s structure;
- redefine SEAE’s role in the competition regime;
- institute a pre-merger notification system;
- alter the present triggering requirements for reporting mergers;
- give exclusive jurisdiction over bank mergers to CADE, except for those involving a risk to the overall stability of the financial system, for which exclusive authority would lie with the Central Bank;
- Extend the terms of the commissioners, the Director General, and other senior officers to at least four years (and preferably five);
- eliminate the present market share notification threshold and adopt thresholds based on the domestic turnover of both the larger and the smaller parties to the transaction;
- eliminate notification of non-merger transactions, because the costs imposed by broad notification systems on the business community and on the enforcement agency typically exceed the resulting benefits to competition;
- provide for expedited review and clearance of transactions that do not raise competitive concerns;
- consider designating specialized judges and appellate panels to resolve competition law issues.

Finally, the recommendations made by the set of draft reforms pending indicate:

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<sup>25</sup> SDE, headed by a Secretary appointed by the justice minister, has a prosecutorial role, undertaking investigative functions and some preliminary enforcement functions.

<sup>26</sup> SEAE, headed by a Secretary appointed by the finance minister, has the same investigative powers as SDE, but no prosecutorial functions.

<sup>27</sup> OECD, Policy Brief, September 2005: Competition Law and Policy in Brazil, p. 2.

<sup>28</sup> *Ibidem*, p. 5.

- focus law enforcement efforts on cartel cases;
- promote understanding of, and appreciation for, competition law among both public prosecutors and members of the judiciary; and
- increase the recognition and acceptance of competition principles in society at large.

## ii) Competition in Portugal

Competition Law is a relatively new issue in Portugal, dating the early 1980's. Indeed, the earliest elaborated piece of legislation on competition was the Decree nr 422/83 (December 3, 1983) which regulated concerted and individual practices among companies and abuse of dominant position. In 1988, Decree nr 428 (November 19, 1988) established rules on control of mergers and acquisitions. In 1994 Decree 371/93 (Decreto-lei n.º 371/93 of October 29) entered into force combining into one all the relevant regulations related to competition.

Afterwards, Portuguese legislation in Competition is overwhelmingly influenced by the European Union rules, precisely art. 85, 86 of the EU Treaty and the EC Regulation (CEE) n.º 4064/8929.

The new developments in the Competition System in the European Union gave to Portugal an urgent need to reform the national legislative and institutional framework in order to align itself with the European Union trend. That objective was achieved primarily by creating a new Competition Authority which began its activities on 24 March 2003, and was completed with the publication of the new Competition Act in June (Lei n.º 18/2003, de 11 de Junho).

The Competition Authority was established by the Decree n.º 10/2003 (January 18, 2003) and constitutes itself as an autonomous body. The Competition Authority is made by the Council and the Auditor. The Council is composed by the Chairman and two or four other members. The members of the Council (including the Chairman) are appointed by the Cabinet upon nomination by the Ministry of Economy. The term of the members is of five years subject to renewal.

The five axes that guide the Competition Authority are as follows: (i) to control business strategies (co-operative and concerted) and combat restrictive and abusive practices, with a view to guaranteeing an appropriate level of competition; (ii) to identify markets in which the competition is restricted and promote solutions that benefit the consumer and increase efficiency; (iii) to raise public awareness of the context and benefits of competition; (iv) to provide the government, regulatory agencies and society with services that comply with the standards of best practice at an international level; and (v) to participate in international relationships with a high level of credibility.<sup>30</sup>

To accomplish its mission the Competition Authority is vested by the following powers:

<sup>29</sup> New developments EU Competition System were introduced by Regulation (CE) n.º 2790/1999, of December 22, 1999, Regulamento (CE) n.º 1/2003, de 16 de Dezembro de 2002, Regulation (CE) n.º 139/2004, January 20, 2004.

<sup>30</sup> As competências da Autoridade de Concorrência nos termos do Decreto-Lei n.º 10/2003, de 18 de Janeiro, consistem em “assegurar a aplicação das regras de concorrência no respeito pelo princípio da economia de mercado e da livre concorrência, tendo em vista o funcionamento eficiente dos mercados, a repartição eficaz dos recursos e os interesses dos consumidores”. Assim, incumbe à Autoridade, segundo os seus Estatutos (Decreto-Lei n.º 10/2003) (artigo 6.º): a) Velar pelo cumprimento das leis, regulamentos e decisões destinadas a promover a defesa da concorrência; b) Fomentar a adopção de práticas que promovam a concorrência e a generalização de uma cultura de concorrência junto dos agentes económicos e do público em geral; c) Difundir, em especial junto dos agentes económicos, as orientações consideradas relevantes para a política da concorrência; d) Acompanhar a actividade das autoridades de defesa da concorrência em outros países e estabelecer, com elas, e com os organismos comunitários e internacionais competentes, relações de cooperação; e) Promover a investigação em matéria de defesa da concorrência, desenvolvendo as iniciativas e estabelecendo os protocolos de associação ou de cooperação, com entidades públicas ou privadas, que se revelarem adequados para esse efeito; f) Contribuir para o aperfeiçoamento do sistema normativo português, em todos os domínios que possam afectar a livre concorrência, por sua iniciativa ou a pedido do Governo; g) Exercer todas as competências que o direito comunitário confira às autoridades administrativas nacionais, no domínio das regras de concorrência aplicáveis às empresas; h) Assegurar a representação técnica do Estado português nos organismos comunitários ou internacionais em matéria de política de concorrência; i) Exercer as demais atribuições que lhe sejam legalmente cometidas.



- a) Supervision of the market;
- b) Prosecution of violations and sanctions;
- c) Regulation;
- d) formulation of recommendations to companies and Government in relation to activities or legislation that can hinder competition in the country

The 2003 Act being strongly influenced by the EU System deals essentially with:

- abuses of dominant positions;
- restrictive agreements and concerted practices;
- Pre-control of mergers.

## 4.6 Competition in Mozambique

The Economic Reform Programme undertaken in late 80's having dismantled the centrally planned economy and paved the way for the liberal economy. Local and foreign investors are currently engaged in various economic activities while the State has retreated herself from the leading role in economy to a simple regulatory role.

The Mozambican Constitution indeed is open to free economic initiative, create incentives to the national entrepreneurs<sup>31</sup>, provide for equal treatment of national and foreign investors<sup>32</sup> and underline the leading role of the State on economic regulation<sup>3334</sup>. However, no express reference is made to competition. Although, some legislation is provided for in highly competitive areas such as telecommunications, in other vital sectors such as water, electricity and banks, there is no express reference to competition regulation.

One relevant exception refers to the telecommunication area: The Telecommunications Act<sup>35</sup> provides expressly (article 3) for the need of establishment of rules aiming at advancement of competition among the operators and creates the National Institute for Communications with the objective of promotion of competition and to act against anti-competitive practices.

The Recommendation made by the SADC Trade Protocol (art. 25): "*Member States shall implement measures within the Community that prohibit unfair practices and promote competition*" is a further instrument aiming at fostering competition system among the Member Countries, including Mozambique.

Due to this enabling environment for the establishment of the competition system in Mozambique the Government Mozambique has moved a step ahead adopting a competition policy on July 2007 calling for legislation and establishment of a competition authority.

Indeed the mission of the policy has set the conditions for developing the legal and institutional framework aiming at promoting competition and enabling environment for consolidation of the national private sector and attraction of the investment.

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<sup>31</sup> Art. 107 (incentivo ao empresariado nacional) Constitution of Mozambique: "1. O Estado promove e apoia a participação activa do empresariado nacional no quadro do desenvolvimento e da consolidação da economia do país. 2. O Estado cria os incentivos destinados a proporcionar o crescimento do empresariado nacional em todo o país, em especial nas zonas rurais."

<sup>32</sup> Art. 108 (investimento estrangeiro): "1. O Estado garante o investimento estrangeiro, o qual opera no quadro da sua política económica." On the same path the Investment Law (Lei nº 3/93 of 24 June) indicate expressly the principle of equal treatment among national and international investors: "1. In carrying out their activities, foreign investors, employers and workers will enjoy the same rights and be subject to the same duties and obligations applicable to nationals in accordance with the legislation in force in the Republic of Mozambique."

<sup>33</sup> Art. 97: "A organização económica e social da República de Moçambique visam a satisfação das necessidades essenciais da população e a promoção do bem-estar social e assenta nos seguintes princípios fundamentais: (...) b) nas forças do mercado; c) na iniciativa dos agentes económicos; d) na coexistência do sector público, do sector privado e do sector cooperativo e social; e) na propriedade pública dos recursos naturais e de meios de produção, de acordo com o interesse colectivo; (...) g) na acção do Estado como regulador e promotor do crescimento e desenvolvimento económico e social."

<sup>34</sup> Art. 101 establishes: "1. O Estado promove, coordena e fiscaliza a actividade económica agindo directa ou indirectamente para a solução dos problemas fundamentais do povo e para a redução das desigualdades sociais e regionais."

<sup>35</sup> Lei das Telecomunicações – Lei nº 8/2004 de 21 de Julho

The policy defines clearly the strategy to achieve such goal as the development of the competition legal and institutional framework, by enacting competition legislation and establishing a Competition Authority.

The adoption of the policy was done through a broad consensus of all the members of the cabinet and, henceforth, it was urged that the legislation should follow soon after. The objectives of the Mozambican Government seem to be clear; the political urgency and the expressed decision to proceed to the drafting of the law and all the steps undertaken towards that goal just confirm that perception.

As pointed out before, at the regional level, only five countries still have to enact legislation and operationalize the entire competition system – amongst them Mozambique. It is therefore necessary to proceed with the establishment of the competition legal and institutional framework as compelled by the Competition Policy (adopted by the Mozambican Government in July 2007) and in order to comply with the SADC Trade Protocol.

The legislation must take into account:

- a) the current situation in Mozambique;
- b) the process of regional integration;
- c) the experience of other African countries and especially SADC countries;
- d) the experience of other lusophone countries that has already a competition legislation in force namely: Brasil, Cape Verde and Portugal.

## 5. CONCLUSION

### 5.1 Feasibility of introducing Competition Law in Mozambique

The purpose of this initial analysis was to answer the question of “assessing the feasibility of introducing a competition policy and law in Mozambique” and “whether this goal would be best served by focusing on advocacy alone, or whether the current national industry structure and regional trends warrants a formal Competition legislation and its implementation arm: a Competition Authority.

Even though we do not underestimate the resources, skills, and learning curve challenges of building up an effective competition enforcement authority, our conclusion actually is that the best way to achieve advocacy and effective dissemination of good practices is to adopt a Competition law and create a competition regulator sooner than later.

As a keynote speaker at the International Competition Network in Seoul (\*)<sup>36</sup> justly commented on effective competition law and policy implementation in transition economies:

*“The interest we have in capacity building and effective implementation of competition law and policy is partly because we have seen what has happened in some important developing and transition economies where the pace of liberalization has drastically outstripped the introduction of rules and institutions designed to support effectively functioning markets [...]”*

Even though Mozambique social and economic history stand apart from that of Russia, there is one common trait that one can find between the fast growth years of the 1990s and 2000s in Mozambique and the 5 “Yeltsin years” directly following the fall of Gorbachov: the Russian economy took a 180 degree U-turn and key sectors of the economy – mining, petroleum, gas, aluminum, banking – where turned back to the private sector. The resulting effect was the substitution of state owned monopoly by privately owned cartels and an extremely concentrated economy dominated by oligarchies....not unlike either as South Africa at the end of the Apartheid era (but for totally different reasons) which showed also an economy dominated by a few dominant players....

Mozambique economy being a much smaller economy, and with a natural (current) limit to the purchasing power of its population, there is also a natural , market size limit to which the dominant players can pretend to behave as “oligarch” or cartels. However our analysis of a number of key industrial sector tends to show that a good number of these are indeed dominated by one or a few players who have plenty of room to use (and abuse) of cartel like, dominant, or monopoly behaviors, including price fixing, control of market, collusive tendering, export and import cartels, ignorance of consumer rights or complaints and other discriminatory and anti-competitive practices.

### 5.2 Benefits of Competition Regulation capacity building

Among the benefits of building up a competition authority with capacity for investigating restrictive behaviors and merger review capability as well as holding public hearing of cases (as in the case in South Africa with the Competition Commission & Competition Tribunal), one can highlight the following points:

1. **Public transparency:** All mergers or concentrations above a designated threshold (25-50% market share depending on context) must be notified to and reviewed by the Competition Commission;
2. **Technical and negotiation capacity building** of 1) instructing a dossier (initiate an investigation, gather factual evidence pro/ con the case) , 2) drafting “statement of objections and remedy” to the respondent, and handle back and forth arguments and the defense build by the company on trial; 3) emit a decision by the commission and enforcement of eventual fines;

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<sup>36</sup> International Competition Conference – Capacity building and policy implementation working group – Seoul 2004

3. **Advocacy function of the case review** by the competition authorities: restrictive behaviors or merger hearings are in most cases (should be) publicly held – and interested parties are, in addition to the Commission and the merging entities, entitled to make submissions to the tribunal; Usually the concerned Ministries and trade unions representative of employees of the merged companies are given with mergers notifications and are entitled to make submission to the Tribunal. The Media have also access to all, non confidential information. Hence the public debate on mergers cases can perform a powerful advocacy function, involving civil society.
4. **Maintaining and improving the competitive structure of key markets:** Mozambique government should be empowered to conditionally approve and/ or prohibit transactions that are deemed detrimental to the competitive balance of the markets.

A concluding remark on the issue of Pure Advocacy vs Need for Competition law and Enforcement authority (one of the main objective of this mission). When reviewing best practices of competition management in Africa, it appears actually that the best mean to achieve advocacy and raise awareness on the role of healthy competition in the country is actually to build up a competition authority which can review and investigate anti-competitive behaviors, and hence instruct a public (or publicly available) investigation and hearings about the case.

Achieving effective advocacy by letting the “free hand” of the market at work, and then commenting, many times after the fact, on the pro and con of horizontal or vertical arrangements and/ or antitrust and merger cases, can be educational, but missing the main purpose of competition regulation and pro-active legislation, that is involving public, civil, and private parties in a structured hearing process whose output is precisely to decide on whether the merger is beneficial to public interests or not + curbing decisively, and if needed with sanctions, gross anti-competitive misconducts.

From that point of view, the various representatives of the Government and regulators at the competition workshop were overwhelmingly in favor of drafting a Competition Law and build up (incrementally) a Competition Regulation entity, within the Ministry of Industry and Trade at first (to share resources and information) with the aim of creating an independent Competition enforcement authority as seen and adopted in most countries from the SADC trade community.

Both members of the Government and the consultants do recognize that institutional capacity building is a challenging and incremental process and that a number of “critical success factors (CSF)” need to be in place before the future Mozambican Competition Authority can be fully functional and effective, among these:

6. **Drafting and adoption of a Competition Law (2008)**
7. **Creation of an (eventually) independent and autonomous authority to enforce competition** – which may go through a transition period within a given Ministry (formalizing a Competition Task Force within the Ministry of Industry and Trade – but with an established calendar for spinning off);
8. **Identification and recruitment of a strong legal, economic, and case review team** with intensive initial training over competition regulation and/ or shadow management with other country regulators (South Africa, Portugal, Brasil); key members of the commission may come from outside the government and be respected members of the business or legal establishment;
9. **Advocacy of Competition throughout the various government bodies and ministries** – in order to align the main government, public service, and related organizations with the need and urgency to embrace a fully competitive market, and implement the main lines of Competition policy.
10. **Establish a detailed roadmap for the creation and implementation of the Competition Regulation Authority** – with milestones and key performance indicators.

In order to fulfill these CSF, there is no doubt that the young Competition Task Force will need initial support and training resources in order to build steam and capacity. Hence, very much like a start up in business, we foresee an “incubation period” for the future Mozambican Competition Commission. The resulting benefits for the country will no doubt warrant the investment in capacity building.

YS and FdS

## ANNEXES

### ANNEX 1: List of Participants to the Initial Competition Workshop – 21 December 2007

Nº	NAME	INSTITUTION	E-MAIL	CONTACT
<b>PUBLIC INSTITUTIONS</b>				
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	Abdul Carimo	Technical Unity for Legal Reforms – Ministry of Justice (UTREL)		82 3021760
08	Nuno Mapossa	Investment Promotion Center		82 3094830
09	João Macaringue	Institute for Promotion of Exports (IPEX)	<a href="mailto:jmacaringue@tvcabo.mz">jmacaringue@tvcabo.mz</a>	823070310
<b>SECTORAL REGULATORY INSTITUTIONS</b>				
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11	Eduardo Samuel	Civil Aviation Institute (Aviation)	<a href="mailto:Dudu-moz@hotmail.com">Dudu-moz@hotmail.com</a>	84 2627720
<b>UNIVERSITIES</b>				
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13	Ana Comoane	Eduardo Mondlane University	<a href="mailto:acomokane@yahoo.com.br">acomokane@yahoo.com.br</a>	823033260
<b>PRIVATE COMPANIES</b>				
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16	Faruk Aly Gadit	AIR CORRIDOR	<a href="mailto:fagadit@aircorridor.cco.mz">fagadit@aircorridor.cco.mz</a>	84 3100012
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18	Carlos Meness	SOCIMOL	<a href="mailto:cm@socimol.co.mz">cm@socimol.co.mz</a>	82 3133710
<b>CONSUMER ASSOCIATIONS</b>				
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20	Alexandre Bacias	PROCUNSUMERS	<a href="mailto:proconsumer@hotmail.com">proconsumer@hotmail.com</a>	82 8320610
<b>INTERNATIONAL ORGANIZATIONS/DONORS</b>				
21	Ramon Ynaraja	EC	<a href="mailto:Ramon.YNARAJA@ec.europa.eu">Ramon.YNARAJA@ec.europa.eu</a>	82 3015775
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**ANNEX 2 COMPETITION LAWS – BENCHMARKING – 9 COUNTRIES COMPARISON (FS)**

**COMPETITION LAWS - CONTENT COMPARISON**

CONTENT	COUNTRY								
	Brazil	Malawi	Namibia	Portugal	Senegal	South Africa	Tanzania	Zambia	Zimbabwe
<b>COMPETITION AUTHORITY</b>									
Name	Conselho Administrativo de Defesa Económica	Competition and Fair Trade Commission	Namibian Competition Commission	Autoridade de Concorrência	Commission de la Concurrence	Competition Commission	Fair Competition Commission	Zambian Competition Commission	Competition and Tariff Commission
Autonomous body	✓	✓	✓	✓	✓	✓	✓		
Part of a Ministry									✓
Quasi-judicial body									
Number of Members	7	5 + ex officio members	5		6		5	12	5 - 10
Appointer Authority	President	President	Minister		President	Minister	President/ Nomination Committee	Minister	President
Length of mandate	2 years (R)	3 years (R)	3 years (R)		5 years	5 years	3/4/5 years	3 years (R)	3 years (R)
Investigatory powers	✓	✓	✓	✓	Upon warranty	✓	✓	✓	✓
Provisional remedies				✓					
Type of remedies									
Type of penalties	Criminal/Administrative		Criminal/Administrative	Criminal/Administrative		Criminal/Administrative – Adm may not exceed 10% annual turnover	Criminal/Administrative	Criminal	Criminal/Administrative
Right of appeal	No	✓			✓		No	✓	✓
Appellate body		Judge in Chambers	Tribunal		Tribunal de Lisboa/Tribunal de Relação de Lisboa	Competition Appeal Court	Fair competition Tribunal	High Court	Administrative Court
Specialized Tribunal	No	No	No		No	Competition Tribunal	Fair competition Tribunal	No	No

COMPETITION LAW									
	Brazil	Malawi	Namibia	Portugal	Senegal	South Africa	Tanzania	Zambia	Zimbabwe
Identification	Lei nº 8884	MW Competition and fair Trading Bill, 1998	Act nº 2	Lei nº 18/2003	Loi nº 94-63	CA 1998	The Fair Competition 2003	Act. Nº 18	CA 1996
Year enactment	1994	1998	2003	2003	1994	1998	2003	1994	1996
<b>OBJECTIVES</b>									
Promotion of Competition	✓	✓	✓	✓	✓	✓	✓	✓	✓
Protection/ promotion consumer welfare	✓	✓	✓		✓	✓	✓		
Economic efficiency	✓	✓	✓	✓	✓	✓	✓	✓	✓
Employment creation			✓			✓			
Incentive SMEs			✓			✓			
Incentive local entrepreneurship		✓	✓			✓		✓	✓
Promote innovation							✓		
Capability to compete abroad						✓			

CONTENT	COUNTRY								
	Brazil	Malawi	Namibia	Portugal	Senegal	South Africa	Tanzania	Zambia	Zimbabwe
<b>PROHIBITED ANTI-COMPETITIVE PRACTICES</b>									
<i>Horizontal Agreements</i>									
Differentiation horizontal/vertical/operative agreements	✓	✓	No	No	✓	✓	✓	✓	✓
Collusive tendering	✓	✓	✓		✓	✓	✓	✓	✓
Collective action to enforce/Denny access to arrangements	✓	✓	✓					✓	
Concerted refusal to supply		✓	✓	✓				✓	
Price fixing	✓	✓	✓	✓		✓	✓	✓	✓
Barriers to entry		✓	✓					✓	
Control of market and production	✓	✓	✓	✓	✓	✓	✓	✓	
Market allocation	✓	✓	✓	✓		✓		✓	
Export/import cartels			✓					✓	
Discriminatory practices		✓	✓	✓	✓				
Tying		✓	✓	✓					✓



CONTENT	COUNTRY								
	Brazil	Malawi	Namibia	Portugal	Senegal	South Africa	Tanzania	Zambia	Zimbabwe
<b>PROHIBITED ANTI-COMPETITIVE PRACTICES</b>									
<i>Vertical Agreements</i>									
Resale Price Maintenance	✓	✓	✓	✓	✓	✓		✓	✓
Exclusive distribution/territory		✓	✓	✓		✓		✓	✓
Tying		✓	✓	✓					✓
Quantity forcing		✓	✓						
Royalty		✓	✓						
Discriminatory practices		✓	✓		✓				
<i>Abuse Dominant Position</i>									
Threshold dominance (market/turnover)	20%		Decided by Minister			45%	35% relevant market	40% market	
Predatory pricing									
Prevent the entry/expulsion from market		✓							✓
Refuse to deal		✓			✓				
		✓							
Refuse access to essential facility		✓							
Elimination/prevention or damage to competitor		✓							
Deterrence or prevention to engage in competitive conduct		✓							
<i>Mergers &amp; Acquisitions</i>									
Notification	If there's likelihood that may restrain competition				30% market share or 150 million Euros	Not needed for SMEs	✓		Over a certain turnover or assets
Merger of undertakings		✓							✓
Acquiring controlling interests		✓							
Joint ventures		No							✓
Thresholds			No						Defined by Minister

CONTENT	COUNTRY								
	Brazil	Malawi	Namibia	Portugal	Senegal	South Africa	Tanzania	Zambia	Zimbabwe
<b>PROHIBITED ANTI-COMPETITIVE PRACTICES</b>									
<i>Exemptions</i>									
Efficiency on production or distribution	✓	✓				✓	✓		
Increase or maintenance expc			✓			✓			
Labour Relations		✓						✓	
Professional Associations			✓			✓		✓	
Lower prices	✓	✓							
Acceleration economic/technological development	✓	✓	✓				✓		
Incentive SMEs									
Incentive local entrepreneurship			✓						
Change productive capacity						✓			
Economic stability			✓			✓			
State Enterprises									
Intellectual Property Rights			✓			✓		✓	
Protection of environment							✓		
International obligations		✓						✓	
Mining								✓	

CONTENT	COUNTRY								
	Brazil	Malawi	Namibia	Portugal	Senegal	South Africa	Tanzania	Zambia	Zimbabwe
<b>PROTECTION/INCENTIVE CONSUMER WELFARE</b>									
excluding liability for defective goods;		✓						✓	
claiming payment for unsolicited goods or services;		✓						✓	
engaging in unconscionable conduct in carrying out trade in goods or services;		✓						✓	✓
engaging in pyramid selling;		✓						✓	
engaging in bait selling		✓						✓	
offering gifts or prizes with no intention of supplying them; or		✓						✓	
putting out an advertisement which is misleading or deceptive		✓						✓	✓

**ANNEX 3 COMPETITION / SECTOR QUESTIONNAIRE  
(FACT FINDING MISSION WEEK 17 DEC 2007)**

**PESQUISA SECTORIAL –**

**ASSUNTOS DE CONCORRÊNCIA E ESTRUTURA DO SEU SECTOR**

**INTRODUÇÃO**

A liberalização da economia moçambicana criou as condições para o surgimento de uma multiplicidade de agentes económicos no país. Paralelamente a esse facto a economia registou uma dinâmica sem precedentes que tem favorecido o desenvolvimento económico do país.

A existência de vários agentes económicos consubstanciou a concorrência entre os mesmos na produção de bens e na prestação de serviços.

Por outro lado o processo de integração regional que irá registar mais uma etapa decisiva no ano de 2008, implicará o ingresso de novos actores na economia nacional.

No entanto, o país não possui ainda condições legais e institucionais para regulamentar essa dinâmica. Com efeito, o país regista ainda obstáculos administrativos, reflexos de protecção, auxílios do Estado às empresas, economias de escala, estrutura de sectores inadequada, deficiências na oferta, ambiente “pre-competitivo” e monopólios em muitos sectores dos serviços públicos.

O protocolo comercial da SADC recomenda aos Estados membros o estabelecimento de um quadro legal e institucional que favoreça a concorrência.

Nesta óptica, o Governo de Moçambique aprovou recentemente a política de concorrência que impõe a necessidade de estabelecimento de um quadro legal e institucional de regulamentação da concorrência no país.

O Objectivo do presente questionário é analisar os pressupostos para a implementação e adopção da legislação de concorrência no país. Pretende-se nesta fase, entender melhor:

- 1) a estrutura actual dos sectores industriais principais do país;
- 2) os problemas existentes: casos de comportamentos anti-competitivos, abusos de posição dominante, fixação de preços entre empresas do mesmo sector, existência de cartéis e monopólios, restrição do acesso aos bens (por cartéis), domínio de segmentos por grupos estrangeiros ou nacionais.... e
- 3) do nível de regulação ou intervenção que seria mais eficaz para aliviar ou remediar essas distorções das Lei do Mercado.

*Fernando dos Santos/ Yves Speeckaert*

**QUESTIONARIO:**

1. Qual é o seu sector de actividade? Está no sector público, privado, associativo, organização internacional?

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2. Como caracteriza a estrutura actual do seu sector:

- a) Estrutura de Monopólio (1 empresa somente);  
b) Duopolio (2);  
c) varias empresas medias ou pequenas em concorrência;  
d) penetração forte do capital estrangeiro;

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3. A produção e a prestação de serviços do seu sector está orientada principalmente ao:

- mercado interno;  
 mercado a exportação.

4. Qual é o impacto da concorrência internacional no seu Sector (forte/ limitada)?

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5. Quais são os problemas/ assuntos de concorrência (condutas anticompetitivas) que afectam o seu sector industrial/ segmento

**económico ( usando uma escala de 1 \_\_\_\_\_ 5 (\*)):**

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- Acordos Horizontais (colusão, acordos restritivos entre concorrentes que reduzem a concorrência num sector) \_\_\_\_\_
- Fixação de Preços (entre concorrentes) \_\_\_\_\_
- Divisão do mercado (entre concorrentes) \_\_\_\_\_
- Abuso de Posição dominante (1) (>45% fatia do mercado) \_\_\_\_\_
- Abuso de posição dominante (2)/ acesso restrito ao suprimentos \_\_\_\_\_
- Abuso de posição dominante (3) recusar acesso a infra-estrutura/ rede de distribuição (ex acesso local à TDM) \_\_\_\_\_
- Abuso de posição dominante (4)/ vender abaixo do custo de produção \_\_\_\_\_
- Abuso de posição dominante (5) : impor preços excessivos \_\_\_\_\_
- Fusão/ aquisição que reduzem a concorrência no sector \_\_\_\_\_
- Ignorância das necessidades e queixas dos consumidores \_\_\_\_\_
- Falta de qualidade dos produtos/ preços excessivos \_\_\_\_\_
- Protecção das pequenas e medias empresas \_\_\_\_\_
- Protecção da indústria ou empresas nacionais/ locais \_\_\_\_\_

(\*) pode usar uma escala semântica que vai do 1 \_\_\_\_\_ 5 ( 1 um assunto pouco significativo e 5 correspondendo a um problema ou assunto muito significativo)

**6. Para adaptar a legislação e regulação do Regime de concorrência as necessidades atuais da economia Moçambicana e do seu Sector, quais deveriam ser os objectivos da Política de Concorrência? (por favor desenvolver a sua resposta e identificar os SEUS objectivos/ pontos importantes)**

- OBJECTIVOS SOCIAIS/ DEFESA DOS CONSUMIDORES/ EMPREGO

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- OBJETIVOS ECONOMICOS/ DESENVOLVIMENTO/ CRIACAO DE EMPRESAS/ MERCADO EFICIENTES

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- OBJETIVOS COMERCIAIS/ QUALIDADE DOS PRODUTOS/ PRECOS JUSTOS, COMPETITIVOS, PROMOCAO DAS EXPORTACAO/ ABERTURA DO MERCADO A IMPORTACOES

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**7. Que tipo de intervenção (foco da política sectorial/ alocação de recursos) poderia melhorar a situação de concorrência no seu sector?**

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**8. Faça uma graduação do grau de importância das acções abaixo indicadas na melhoria da política do Governo, e da gestão/ regulamentação da economia (escala de 1\_\_ 3\_\_5)**

- Medidas/ recursos para criação e reforço do Sector Privado \_\_\_\_\_
- Privatização/ reestruturação do Sector Privado \_\_\_\_\_
- Estabelecimento de regras claras de concorrência \_\_\_\_\_
- Diminuição dos impedimentos administrativos/ corrupção \_\_\_\_\_
- Integração económica Regional (SADC) e abertura aos mercados globais \_\_\_\_\_
- Redução das barreiras tarifárias e não tarifas de Moçambique \_\_\_\_\_

*Obrigado para ter participado nessa pesquisa sectorial*

*Agradecemos se puder retornar esse questionário (preenchido) para a Directoria do Instituto da Propriedade Intelectual (IPI) de Mocambique no endereço:*

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