

**Importance of Competition Law in Africa:
Relevance for Namibia
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1. Competition Laws In Africa

Competition laws and policies have long been present in industrialised economies but only started to take root around since the 1990s in the non-industrialised and emerging economies that includes Africa.

It was estimated that since the year 2000, only half of the 54 Member States of Africa have enacted competition laws in their countries. The adoption of competition laws in Africa have largely been as a motive for African economies to comply with regional trade agreements and to regulate business competition.

A major milestone for acceleration of competition regime in Africa has been as a result of concerns expressed on Multinational Companies causing cross border anti-competitive practices in Africa such as price abuse, dominance abuse and restrictive carter and collusive behaviour.

It is recognised in Africa that by having to enact and operationalise competition policies and laws for an African economy is essential if it wants to manage its economy through a regulatory system that fosters economic growth, innovation and development. Anecdotal and researched literature shows that competition law do **discipline market competition** in any economy.

Competition laws fosters **competitiveness of markets and businesses** and also **assist in consumer protection** where consumers get the best products for the least prices.

Competition Laws do condition and heal **market failures** i.e. the private sector sometimes not doing what it ought to do in terms of proper and orderly competitive conduct in the marketplace.

Competition laws assist in fostering **innovation by nudging businesses** to constantly improve, bringing in new equipment and producing products which are competitive and offering wide range of choice for consumers. The competitive dynamics ensure that new firms come into the market and prosper if they perform well in the marketplace and less efficient firms become unprofitable and are forced out or close down. These have implications for the **industrialisation and small business development efforts** in an economy and industrial growth in general for Africa.

Competition laws changes the business landscape through **Mergers and Acquisitions** in the African economies because they inadvertently reduce the number of market players.

Competition Policy and Law can assist in securing gains from **trade liberalisation and market opening**. The reduction of barriers to trade and the removal of barriers to entry for domestic and foreign investment can actually assist African economies to access its regional and continental markets and can spur competition for the production of goods and services unique to Africa through free trade, efficient production and industrial processes and proper market access.

2. Relevance for Namibia

Competition Law in Namibia has been enacted in 2003 and enforced in 2008 with operations of the Namibian Competition Commission, the country's supreme competition supervisor commencing in 2009.

Competition law in Namibia is premised on need to promote the competitiveness of Namibia by ensuring an efficient, adaptive and developmental state of the Namibian economy. Since its enforcement, the Commission entrusted with the full administration and operationalization of the Competition Law handled over 500 significant mergers and acquisitions in telecoms, banking, manufacturing, commerce, retail, trade and mining sectors where business are compelled to not only to maintain fair competition in the market, but to keep rivals in check, and to ensure that Namibian firms are compelled to constantly improve, bringing in new equipment and producing products which are competitive and offering wide range of choice for consumers.

In a competition environment, usually companies compete on price or cause price and dominance abuse. The companies do this by managing its cost of producing a product and the cost of distributing this product to the market which becomes a crucial factor in competition. Firm will usually try and beat their competitors on price and they do this by reducing the cost of production and distribution. Thus competition encourages firms to find alternative cheaper ways of production and distribution. But through such actions, they become dominant and behave in a fashion that would be collusive thus causing unfair competition levelling field to other businesses. It is known that the greatest price and dominance abusers are multinational companies that would want to make their footprint in Africa to do businesses.

Through enforcement of the Act, the Commission continues to exercise its role that the market players do not only compete with each other for them to actually enjoy price reductions but also to avoid any collusive and cartel conduct that frustrates other competitors and leads to consumer welfare loss and inefficient production and distribution outcomes.

Furthermore, the lessons from enforcement of African economies on competition law shows that price and dominance abuse can lead to frustration of free competition, misallocation of resources and inefficient production and distribution outcomes. An industry which is not competing is not likely to be successful on the African and international market because when faced with fierce competition from competitive markets they would not have any competitive and comparative advantage.

The Commission has a role to play to stop such collusive conduct and to ensure that an industry is not highly concentrated and if it is, there is no abuse of dominant position of market power by dominant firms. Most Namibian industries and sectors are highly concentrated and therefore the threat of abuse of dominance or possibility of collusion is very real. The role of the Commission is to ensure that dominant firms do not stifle competition and that competition needs to thrive for the benefit of the overall economy. The Commission have that responsibility to look at objects or effects that reduces competition in the industry, sector or economy whether caused by any company in Africa with its presence in Namibia or whether a Namibian company uses its African footprint to cause anticompetitive practices in Namibia.

In conclusion, the Commission is a member of the African Competition Network which is affiliated to the International Competition Network (ICN). The Commission continues to play its role to regulate the businesses in a proper and facilitative fashion without compromising the mandate provided to it by the Competition Act of 2003.

The competitive dynamics in Namibia ensure that new firms come into the market and prosper if they perform well in the marketplace and less efficient firms become unprofitable and are forced out or close down. These have implications for the industrialisation efforts in an economy and industrial policy in general in Namibia as spearheaded by the Ministry of Industrialisation, Trade and SME Development towards economic transformation as envisioned in Vision 2030 locally as well as on the SADC and African Union wide Industrial Policy.

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