

# MEMORANDUM ON COMPETITION AND ANTITRUST

“... Competition drives our economy. And even countries that used to rely on planned economies and national champions are rushing to competition. Competition clearly is one of the most significant reasons why we are an economic success. That is why antitrust laws are important to all of us. If dominant firms are allowed to misuse market power to fence off competition, or if groups of firms are allowed to collude to prevent competition by fixing prices or allocating customers, or if anticompetitive mergers increase prices, reduce output or stifle innovation- - - our economy will suffer” --- Adam M. Golodner (Chief of Staff Antitrust Division, U.S Department of Justice) on the U.S Economy (January 2000)

## INTRODUCTION

The concepts of competition and anti trust are necessary to encourage innovation and provision of better services in the market place. The treatise below is a response to a request for a memorandum on competition and anti-trust in different sectors of Nigerian Economy.

## BANKING AND INSURANCE

The concept of universal banking has engendered anti-competitive practices in the banking industry. Banks are now substantial owners of stocks in Insurance Companies; some banks actually are 100% owners of insurance companies. The anti-competitive practice that is a common occurrence is that the banks insist that the beneficiaries of their loans must insure the transactions with the Insurance companies in which the banks have interest. The beneficiaries of the loans are not given the option of sourcing for an insurer in the open market with a view to obtaining the same policy for a cheaper premium. The effect of this is that no matter the rate of premium chargeable by the Insurance Company appointed by the bank, the beneficiary (who, more often than not, is at the mercy of the banks) pays. This translates to a higher cost of funds and thus a higher cost of the product or service for which the loan was. This practice presently is legal and legitimate under Nigerian Law. There is little or no protection for the customer who is at the mercy of the bank. The Customer should ordinarily not be too worried, as he will pass the cost to the ultimate consumer. This practice hinders competition between insurance companies and of necessity raises the cost of the insurance service as the banks have created a situation of artificial monopoly. This is classical case of vertical restraint between providers of services in different sectors of the economy carried out in such a way as to stifle competition and thus negatively affect the workings of a free market economy which is dependent on unhindered operations of the forces of demand and supply.

The banks also restrict the independent contractors and service providers used by them in the options available to the contractors when the contractors and service providers are in need of banking services. The banks often insist on contracts of exclusivity when negotiating with contractors and service providers. It is not a thing of surprise when banks insists that service providers like accountants, lawyers, actuary scientists, security

service providers open and operate accounts with the banks before their services can be patronised. The point here is that the service providers end up operating accounts in virtually all banks that are their clients irrespective of the level of efficiency of the banks. This practice as it is, obviously encourages lethargy and hinders innovation. The banks by this practice distort the operation of an efficient market place and thus attempt to ensure that the service providers are tied to the banks apron strings whether or not the banks are being run efficiently.

#### GOVERNMENT CONTRACTS AND PROCUREMENT

Bid rigging is an aspect of anti-competitive behaviour that is very prominent in government contracts and government procurements.

It should also be pointed out that this phenomenon is getting rampant in the private sector contracts and procurements. We will at once elucidate on this. Bid rigging often occur when in the process of competitive bidding for a government contract or procurement two or more bidders collude to present different bids in such a manner as to create an artificial competition which in actual effect makes the procurer to obtain goods and services at a higher price than at a price that would ordinarily be applicable in the absence of a collusion. This often arises in biddings for government contracts and may actually be in existence in bids for government licences be it in the telecommunication or oil and gas sector.

#### PRODUCTION AND TRADING SECTOR

The kind of anti-competitive behaviour prevalent in the trading sub sector is “predatory pricing”. It is universally believed that this kind of practice is the most difficult in ascertaining. It often occurs when a major player in a particular area of the economy or trade deliberately offers a service or a product at a price below the cost with the aim of undercutting competitors who sell at a higher price and then increases prices when he has captured the market and enjoys a monopoly. It is thus seen that in the short run, while the predatory pricing is prevalent, the consumer is at an advantage but in the long run (at the occurrence of a monopoly) the consumer will be worse off. Incidents of this type of anti-competitive activity abound in Nigeria. We are living witnesses to what happened in the commodity sub-sector (particularly Sugar) some years ago. Even this kind of practice might not only be limited to price undercutting alone. There may be non-monetary incentives being offered so as to enable the predator eliminate competition and thus raise the prices after such elimination. The incentives may come in the form of some bonanza or promotion and it takes trained anti-trust personnel to see beyond the smokescreen of the bonanza.

Other restrictive or anti-competitive acts include the prevention of traders who are not members of a trading association from operating or selling their wares in particular markets. It is apparent that once rivals are prevented from accessing the market there can be no competition. This is so rampant in market cities like Lagos, Onitsha, Kano and particular commodity or product markets.

It is often the practice of traders to insist on selling specific products if and only if they are bought alongside or together with other products, which are either inferior or exorbitantly priced. The effect of this anti-competitive act is that the producers or suppliers of the inferior or expensive goods will only be laid back and lackadaisical about their product, its quality and will cease to be innovative and detrimentally affect the overall interest of the consumers and the economy.

Another practice that is worthy of mention is “Market Sharing”. This arises when producers of goods who should ordinarily be competitors agree to decimate a particular market and allocate portions of it to one another with the understanding that the conspirators will not trade in one another’s allocated market. The understanding is that each participant will enjoy exclusivity in its market area and thus create a monopoly, which impedes pricing efficiency and retards innovation.

#### TRADE AND BUSINESS PRACTITIONERS ASSOCIATIONS

It is usual to find that every trade or service available in Nigeria has some association or the other made up of practitioners of that trade or providers of that service. It is the usual thing to find that such an association tries to regulate the practice of the particular trade or the provision of the particular service. While this on the surface looks very salutary, one should be wary of the real objects of the trade or business associations. When the objects of the association of practitioners of that trade or business include

1. The regulation of prices or
2. The imposition of stiff conditions or criteria of admission into the practice of the trade then it will be apparent that the activities of the association are anti-competitive. When these associations fix prices below which any practitioner in that trade or business should not go then the mechanism of demand and supply is being artificially tampered with thus affecting the operation of a free market economy and concomitantly its advantages. The associations are more or less cartels and their aim is to “limit output with the objective of increasing prices and profits... Cartels by their nature eliminate or restrict competition. Companies participating in cartels produce less and earn higher profits. Society and consumers pay the bill”\*

You have these associations ranging from producers’ association, road transporters’ association, retailers’ associations and so on.

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\* Mario Monti – Member European Commission in charge of Competition Fighting Cartels : 3<sup>rd</sup> Nordic Competition Policy Conference Stockholm 11-12 September 2000.

## CONCLUSION

The instances above are the ones that readily come to mind and one is constrained as a result of the time limit specified for the submission of the memorandum. However it is pertinent to point out that an all-embracing anti-trust legislation fashioned in the model of the Sherman Act, the Clayton Act and the subsequent anti-trust enactments taking into consideration the E.E.C provisions will go a long way in curbing the anti-competitive acts stated above. The appropriate department should also be manned by trained personnel who are conversant with the issues and the objective of the anti-trust policy to be fashioned out.

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