

**Anti-competitive
agreements**

Abuse of dominance

Merger Control

Consumer protection



Background

The establishment of Competition Authorities and the promulgation of Competition (Antitrust) laws have become an essential part of modern economic systems. It is widely acknowledged that Competition laws have played an integral role around the world in facilitating competitive markets, thereby maximising consumer welfare. Competition regimes have spread rapidly over the years, covering both large and small economies. While African nations have been relatively slow in adopting competition regimes, interest in competition law is growing very fast, spurred by the Africa Continental Free Trade Area (AfCFTA) policy on competition. Ghana is not yet part of the community of competition law jurisdictions but it is certainly getting closer to achieving that goal by drafting a policy and Bill.

The Ministry of Trade, in conjunction with other relevant state agencies, has prepared a Bill to be laid before Parliament to establish a Competition Commission in Ghana. This may happen soon, but some aspects of the proposed competition policy and law appear to be a departure from settled principles of competition law around the world. Some of these deviations are pivotal to the competitive dynamic experienced in Ghana and will be problematic if passed into law by Parliament.

In the absence of a Competition Commission, sectoral regulators like the Public Utilities Regulatory Commission, the Bank of Ghana and the National Communications Authority will continue to exercise sectoral competition oversight. In doing so, however, they are often compromised because they do not have the resources to apply competition policy with the full and evolving range of policy issues and sound economic theory which underpins the effective application of competition law across all sectors of the economy.

The Ministry of Trade, Agribusiness and Industry is the custodian of the draft competition policy and its accompanying Bill. To this end, the Ministry convened a stakeholder meeting in 2023, but only for the purpose of discussing competition policy in general, rather than its detailed application in Ghana, and since then there have not been any further stakeholder consultations. Given that the drafts have not been submitted to Parliament for consideration, this may be the most appropriate time to influence the proposed policy and draft Bill by organizing a seminar to impart knowledge to relevant industry and institutional stakeholders on the key elements of the draft policy and Bill. This is therefore the reason for organizing this

seminar, to be addressed by accomplished competition law practitioners and academics with a view to providing guidance to all stakeholders.

Objectives of the seminar

Educate stakeholders on fundamental principles and purpose of competition law

The first objective of the seminar is to educate stakeholders on the fundamental principles of competition law. Competition cuts across all sectors of the economy and without the appropriate level of awareness, economically harmful practices such as price and non-price discrimination could be allowed to persist and harm competition. A typical example of problematic commercial conduct is discriminatory access to digital platforms and other essential facilities, which will often go undetected. Similarly, cartels could be sustained indefinitely if the appropriate mechanisms for their identification are not put in place and if they are not systematically investigated and punished by a Competition Commission equipped to unearth such anti-competitive practices. Bids for important contracts could be rigged in ingenious ways to the detriment of competitors and consumers (and in many cases the State) in the absence of the watchful eyes of a Competition Commission. Market dominance is another major area of concern because it enables dominant entities to abuse their power in many ways including: predatory pricing and margin squeezes, refusals to deal, tying, requiring buyers to acquire all units of a particular product from the dominant entity or excessive pricing. Intellectual Property Rights (IPR) could be abused under certain circumstances, just as mergers could result in uncompetitive markets depending on the particular situation. The speakers will therefore elucidate on all aspects of competition policy as the country prepares for the introduction of a competition law regime.

Identifying areas of the draft policy and Bill that may need improvement

There are areas in the draft policy and Bill that may have to be tweaked for the law to serve its purpose without generating unnecessary and avoidable complications with other aspects of law enforcement, because these considerations are also important from an economic and societal viewpoint. . However, the failure to correct deviations from fundamental competition law principles may inadvertently lead regulatory bodies and the Commission to produce undesirable outcomes. A typical example is the definition of Significant Market Power (SMP)

in relation to an undertaking that has a 45% market share. Such a mechanical approach to the determination of SMP may not produce optimum results, as it ignores the full economic analysis that should be required to determine an SMP finding. Similarly, there appears to be a derogation in the drafts with regard to IPRs, but this fails to take account of the fact that there are many cases of abuse of IPRs. Issues like this will be addressed by the speakers to point stakeholders to areas that may require improvement when the drafts are circulated for comments by stakeholders.

Stimulate stakeholder interest in the current drafts to serve as a force for good

Once stakeholders become aware of the form and content of good competition law, they will become interested in the draft policy/Bill and contribute to improving the draft. A well drafted law will be beneficial to all stakeholders; law firms, regulatory bodies, the judiciary and all economic undertakings. It will also go some way to helping consumers understand the benefits foreseen by effective competition law enforcement. It is therefore important to stimulate interest in the draft competition policy and Bill through the seminar.

Expected Outcomes

At the end of the seminar, it is expected that participants will become enlightened enough to want to contribute to any call for comments on the draft competition policy and Bill

Contributions by the community of lawyers and other stakeholders will shape the policy and law in the right direction, thereby avoiding any distortive departures from the basic tenets of competition law

Participation by judges will mean that they are in a better position to adjudicate appeals against the Competition Commission based on detailed knowledge and a better appreciation of competition law (as occurs with national judges in the European Union). At the very least, the judiciary will be in a position to plan specific training for the application of competition law.

The seminar will draw the attention of all undertakings involved in economic activities, irrespective of their legal status or the ways in which they are financed, so that they are all subject to competition law and must avoid conduct that is potentially infringing

The seminar will equip sectoral regulators like the Public Utilities Regulatory Commission, the Bank of Ghana and the National Communications Authority with extra insights into sectoral regulation, its boundaries, when and how best to conduct sectoral regulation to enhance competition and how to create a fair and competitive environment

It is also expected that the seminar will point stakeholders to the appropriate reading materials for continuous education in this area to create a community of knowledgeable lawyers and jurists to oversee our nascent competition regime

Structure of the seminar

The event will be divided into three parts. The first part will be introduction and delivery of keynote addresses. The second part will be the delivery of lectures by the two invited speakers, while the final part will be a roundtable session where two other competition economists/legal experts will join the invited speakers to answer a wide range of competition law questions.

The seminar will be restricted to selected stakeholders who are most likely to be in the position to influence the draft policy and Bill in a constructive manner.

Speakers

Peter Alexiadis

Peter is a Visiting Professor at King's College London since 2006 and is a Visiting Scholar at the French Universities of the Catholic University of Lille and KEDGE Business School in Paris

Peter has practiced Community law in Brussels since 1989, specialising in competition law, regulatory policy (especially in the communications sector), and intellectual property law. He holds postgraduate legal qualifications from the Universities of London, Sydney and Thessaloniki. He retired from the US law firm Gibson, Dunn & Crutcher LLP on 1 January 2022, having been the Partner-in-Charge of the Brussels office for many years. At Kings College, Peter taught the respective LLM modules on Competition Law & Regulated Network Sectors and on Digital Regulation. He has previously taught Competition Law at the Strathclyde Management School and is currently a Research Fellow at the Centre for European Regulation (CERRE) and teaches regularly on OECD programmes and at the College of Europe's Summer School for Competition Authorities. Much of his time is spent advising competition and sector-specific regulators, and government Ministries responsible for implementing policy, legislative and policy change. He is the Chief Editor of the Utilities Law Review (ULR) and the International Bar Association's International Business Law (IBL) Journal. Peter is also an Advisor to the International Institute of Communications (IIC). He writes for a range of academic and professional publications and speaks regularly on policy issues at various international fora.

David Bailey KC

David Bailey is a Professor of Practice Law at King's College London, a barrister and author and a recently appointed King's Counsel. Professor Bailey has taught postgraduate courses on competition law and policy at King's College London since 2003, having taught at King's since 2001.

Professor Bailey is a practicing barrister, qualified in England and Wales and in Ireland; he is also an attorney in New York. Since 2015, he has been Standing Counsel to the UK Competition and Markets Authority and the Hong Kong Competition Commission.

In 2017 he was appointed as a Non-Governmental Adviser to the International Competition Network. In 2019 he was ranked as one of the 'Most Highly Regarded' junior barristers in Who's Who Legal UK Bar: Competition. In 2019 Professor Bailey was awarded the King's Education Award 2019 for Sustained Excellence. Professor Bailey is also a member of **Brick Court Chambers**.

The speakers are acclaimed academics and practitioners of competition policy and law. They have both published numerous articles, books or book chapters. They are best described as authorities in competition policy and law. Each speaker will speak on specific issues listed below.

Attendance

Attendance to the seminar will be by invitation only, with a focus on lawmakers, relevant Ministries and competition advocacy groups, as well as law firms with an interest in competition. The Ministry of Trade, which is the responsible government body working on the draft Bill, will be invited to give the Keynote Address. The Chair of the seminar will be a superior court judge, most likely the Supreme Court Judge in charge of the Judicial Training Institute. Some appropriately situated Parliamentarians will also be invited to the event, given that the Bill will soon be debated in Parliament. There will also be attendees from the Office of the President and other entities with interest in competition law, including those members of the legal departments of key industry undertakings.

Venue: Movenpick, Accra

Date: 25th March, 2025

Organisers: Competition & Markets Center, Accra-Ghana