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COMPETITION AND COMMODITY PRICE VOLATILITY

Contribution by Senegal

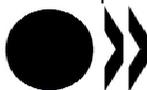
-- Session I --

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COMPETITION AND COMMODITY PRICE VOLATILITY

-- Senegal* --

1. The surge in agricultural commodity prices, which began in 2003, continued until the first half of 2008, when it peaked. This period was marked by sudden and sharp spikes. In fact, according to the FAO, between January 2006 and April 2008 the prices of maize, soy beans, wheat and rice increased by 175%, 120%, 125% and 168% respectively before slackening in the latter half of 2008. The same turmoil could be seen in other commodity markets as well (such as those for pewter, nickel and oil). On 2 January 2008, the price of a barrel of oil reached the \$100 threshold for the first time.

2. After the easing noted in the second half of 2008, pressures on foodstuff prices were observed as from mid-2010, and the FAO has forecast that world prices for rice, wheat, maize and oilseeds would surge between 2015 and 2020. Over that period, it is projected that these prices will be respectively 40%, 27%, 48% and 36% greater than between 1998 and 2003.

3. Multiple causes have been catalogued: climate fluctuations; rising global demand, on the part of rapidly growing countries in particular; supply-side bottlenecks; the manufacture of biofuels; the close interactions between commodities, such that demand for biofuels pushes up the prices not only of maize, but also of other products for which it is an input (*e.g.* dairy products, etc.); and the extensive speculation due to the financialisation and interconnection of markets (the sub-prime crisis, for example, had repercussions on products such as coffee and cocoa).

4. The sudden and sharp spike in the prices of basic foodstuffs lies at the root of a serious food crisis and hunger riots in some countries. It has also had major impacts on revenue and development projects, especially in importing countries.

5. Each State has tried in its own way to find solutions for coping with the extremely urgent situation facing the most vulnerable segments of its population.

6. Under such circumstances, the questions facing a competition authority are the following:

- Are the steps that States take to cope with the crisis arising from price volatility always consistent with competition law and policy? Is there some way, via competition policy – thus in this case implying implementation of competition law – to prevent or reverse commodity price volatility? In other words, should competition authorities limit themselves to passive observation of the erratic fluctuations until prices return to normal, or do they have solutions to propose which competition law and policy alone can provide?

7. Can competition in fact be a remedy for commodity price volatility? Such questions are difficult to answer and require extensive research. But it is already an established fact that in most cases it was

* Contribution submitted by Mr Mouhamadou Diawara, President of the National Competition Commission of Senegal.

States that reacted promptly, often taking measures not always dictated by competition-related concerns (Part 1). Such was the case in West Africa, where regional and national competition authorities apparently had little reaction to price fluctuations. And yet competition authorities should be at the forefront to take charge of issues such as this (Part 2).

1. Administrative measures having an impact on competition

8. Reacting to the volatility of agricultural commodity prices, certain States took protectionist measures. More generally, many countries – including Senegal – took a number of steps to lessen the domestic-market impact of external price volatility.

1.1 Protectionist measures

9. Without actually reverting to the protectionism that followed the 1929 crisis, certain States did, in order to protect themselves, take measures that restrict trade and can have repercussions on international competition.

10. Among the measures falling into this category are:

- Certain countries' decisions to prohibit or limit exports of certain agricultural commodities (*e.g.* setting export or import quotas, imposing export taxes). The FAO has stated that bans on grain exports contributed to a price increase and to volatility on international markets.
- Government subsidies to national enterprises.
- Establishment of non-tariff barriers or tightening of health or safety regulations.

1.2 Temporary measures to reduce the domestic-market impact of external price volatility: the example of Senegal

11. Responding to the sudden and sharp spikes in commodity prices, the Senegalese State imposed tax and regulatory measures to slow or to offset price increases. These measures consisted, in 2008, in suspending customs duty and VAT on certain widely consumed foodstuffs (rice, wheat, milk). At the same time, it increased subsidies on food (rice prices) and energy (electricity, butane gas). Some businesses were afforded compensation, as was the case with Suneor after the oil price increase was frozen.

12. Price subsidies had repercussions on the national budget. The amount of these subsidies, for selected products, increased in 2007 from 40 billion to 116 billion CFA francs.

13. It must be said that the Senegalese parliament, when drafting the 1994 Competition Act, drew inspiration from French legislation by authorising the State, on social and economic grounds, to set the prices of certain goods, products and services via legislative and regulatory means (Sec. 42.L.94-63 of 22 August 1994 on prices, trade and economic disputes)

14. Above all, Sec. 43 allows the State to impose temporary measures, for a renewable period of no more than two months, against excessive price increases on grounds such as a calamity or crisis situation. In such cases, the Competition Commission shall make its opinion known within the first two months of application of any restrictive measures.

15. Pursuant to this Act, a decree capping the prices of certain foodstuffs (including sugar, oil, rice and so on) was enacted on 1 February 2011. Yet in taking these measures, the Senegalese authorities left a certain leeway to competition by only imposing a ceiling on prices. They were correct, because

competition is a vital tool for the welfare of consumers, and the competition authorities need to take charge of issues raised by commodity price volatility.

2. The competition authorities' response to commodity price volatility

16. This section will focus on three aspects: the interconnections between commodity price volatility, for agricultural commodities in particular, and competition law and policy; the fact that commodity price volatility prompted little reaction by competition authorities in the West Africa region; and the role that these authorities must continue to play.

2.1 *The interconnections between competition law and policy and agricultural commodity price volatility*

17. Competition law and policy are instituted to combat anti-competitive practices such as illegal cartels and abuse of dominant positions. Another of their functions is to control concentration.

18. From this standpoint, it is perhaps legitimate to ask questions about the roles and/or the powers of the competition authorities when agricultural commodity price volatility is caused by climatic fluctuations, biofuel production, a lack or decrease in inventories and stock-market speculation in agricultural financial markets.

19. Taking a narrow view might suggest that the solutions would lie outside the realm of competition law and policy. (What can a competition authority do against volatility triggered by natural disasters or intense speculation?) The role of speculation in price volatility is controversial. It might be thought to have little influence over volatility, which merely reflects variations in supply and demand. Solutions making no reference (at least explicitly) to competition law and policy have in fact been put forward, and some specialists are even calling for creation of an international agriculture organisation. But extensive analysis shows, however, that the existence of erratic prices can result from manipulations of human will, in connection with agreements between business enterprises at both the international and national levels.

20. The process leading to sudden and sharp rises may be the result of cartels (cartels for the export of certain products, such as rice).

21. At the national level, businesses and other enterprises can exploit a gloomy international climate in order to prompt or maintain price variations that are beneficial to them, through agreements concluded among themselves.

22. Some commodity markets, which are concentrated by virtue of their small numbers of players, may be ripe for collusion.

23. This is why national and international markets warrant continuous monitoring by competition authorities, and genuine and effective co-operation between them.

24. On this score, it should be emphasised that the FAO study reveals that the root cause of price volatility can be found in either domestic markets or international markets.

25. The competition authorities must get involved in solving the problems created by price volatility. Such involvement was not really perceptible in the West Africa region during the 2007-08 food crisis.

2.2 *Agricultural commodity price volatility prompted little reaction from West African competition authorities*

26. The crisis arising from agricultural commodity price volatility prompted little reaction from either regional or national competition authorities of the ECOWAS or WAEMU countries.

27. The very limited reaction was due to structural weakness and a lack of resources to conduct such activities as market studies or preventive surveys to identify potential distortions of competition. They do not have the real-time information system that would enable them to present the government with suitable adjustments.

28. Even so, however, competition authorities cannot and must not remain passive during periods of price volatility because their primary mission is to look out for the interests of consumers. Consequently, they must be put in a strong position and continuously exercise their market-monitoring mission.

2.3 *Role of the competition authorities with regard to commodity price volatility*

29. The competition authorities have an ongoing regulatory mission in their various markets. In addition to their power to impose sanctions, they also perform a competition-watch mission in order to detect any market failures arising from anti-competitive practices. This mission does not change, but it calls for greater attention and vigilance in periods of crisis. Sudden fluctuations in commodity prices must be observed with precaution, both upstream and downstream, in order to detect the real causes and propose appropriate solutions.

30. The temptation to revert to an old-fashioned centrally planned economy, or resort to its methods, always comes back in periods of crisis.

31. Yet it will always be the competition authorities' responsibility to make the government aware, using its powers of persuasion, that the paramount weapon in combating the high prices that can result from organised or persistent volatility is the institution of sound competition policy.

32. Programmes of corporate compliance with the rules of competition can also help.

33. The existence of a period of price volatility can justify no deviation from the rules of competition.

34. With regard to these points, the opinion handed down by the French competition authority on the compatibility of competition law with the inclusion in trade contracts of price adjustment and smoothing clauses (in the latter case to adjust prices in response to agricultural commodity price volatility) warrants emphasis.

35. The French competition authority has said that such clauses were possible, but "the prices must be set independently, with reference to the actual costs of the contracting parties and with no alteration of those parties' freedom of negotiation".

36. This pioneering and vigilant role must also be ours.

37. According to the Minister of Trade of Senegal, "Price policy for the years ahead is going to be a policy of production to achieve food self-sufficiency, combined with a policy of cost control."

38. We would add that because of the efficiency gains it induces, a good competition policy is the best tool for achieving those objectives.

39. It is therefore important to assist the national competition authority and endow it with greater resources to carry out the challenges of its mission, such that it can have access to continuously updated databases on price movements.

40. In the final analysis, there is scant information on agricultural commodity markets, and transparency is not their greatest virtue. Derivative commodity markets do not have a suitable special regulatory framework. But while it must be agreed with the view of some that “the answer to volatility of foodstuff prices is not to accuse markets or prevent them from working, but to make better use of them”, it must also be acknowledged that regulation via competition would be appropriate to uncover any cartels that might be hiding therein, along with any other groupings of any sort whose abuse of their economic and financial power may have a detrimental impact on price trends in the various commodity markets.