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FIGHTING CORRUPTION AND PROMOTING COMPETITION

Contribution from Benin

-- Session I --

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FIGHTING CORRUPTION AND PROMOTING COMPETITION

-- Benin * --

1. Introduction

1. At first glance, one might question the usefulness of undertaking a discussion of the topic “Competition and Corruption”. While much could be said about each of that topic’s component parts, the connection between the two is not immediately apparent.

2. Yet it soon becomes clear, upon somewhat closer inspection, that there are in fact connections. Admittedly they are subtle, but they are real. To launch the debate on this topic, a first step would be to gain a better understanding of what both of the terms “competition” and “corruption” actually encompass.

3. Next, the analysis can focus in general on Benin’s experience of the phenomena covered by these two concepts, and in particular on what the country has done to promote competition and fight corruption. In the process, the connections that exist in Benin between the elements making up the topic will be identified and highlighted.

2. Summary definitions and implications

4. In economics, competition refers to the presence of multiple players wishing to access a limited resource, as in the case of economic agents making simultaneous use of the same raw material or present simultaneously in one and the same market.

5. A market with pure and perfect competition is a market that satisfies five conditions:

- Atomicity of players: There are numerous buyers and sellers, precluding the formation of any coalitions of economic agents.
- Homogeneity of products: Products are similar.
- Transparency of information: All characteristics of the market are known to the players.
- Free entry and exit.
- Free movement of factors of production.

6. For its part, corruption may be defined as any behaviour that:

- Influences a decision by a government official or public authority;

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- Causes an official to become dishonest or erodes the trust one might have in that official in the routine performance of his or her duties;
- Underlies conflicts of interest.

2. Benin's framework for promoting competition

7. All of the aforementioned characteristics of a competitive market can be seen to exist in Benin. It must therefore be concluded that Benin constitutes a largely competitive market.

2.1 Legislative and regulatory framework

8. Initiatives to promote competition in Benin are currently based on the following three legislative and regulatory instruments:

- Regulation No.2/2002/CM/UEMOA relating to unfair trade practices within the West African Economic and Monetary Union, the provisions of which have been or are in the process of being transcribed into the laws in effect in each of the Union's member countries. In Benin, a bill for this purpose is still under study.
- Act No. 90-005 of 15 May 1990 stipulating the conditions for carrying out trading activities in the Republic of Benin.
- Ordinance No. 20/PR/MFAEP of 5 July 1967 regulating prices and inventories.

2.2 Institutional framework

9. In Benin, the ministry that oversees trade includes a technical directorate, known as the Directorate for Competition and the Fight Against Fraud, the missions of which include:

- Initiating, formulating and enforcing laws and regulations in the realms of competition and fraud;
- Combatting unfair competition;
- Seeing to the elimination of administrative, technical and logistical obstacles that hamper free competition in the national market;
- Fostering access to information for economic agents so as to enhance their capacity to operate under freely competitive conditions;
- Performing the role of focal point of the Competition Advisory Committee set up as part of the co-operation between the WAEMU Commission and the member countries.

10. In addition to the above directorate, there are sectorial authorities that regulate competition. These authorities intervene in the following areas:

- Postal and telecommunications services;
- Government procurement.

2.3 *Brief summary of the implementation of activities to promote competition*

11. In pursuing its mission, the directorate responsible for promoting competition has arranged activities involving:

- Bolstering the capacities of trade inspectors;
- Provision of information to consumer associations;
- Heightening the awareness of economic agents and consumers;
- Inspection campaigns that in some cases lead to prosecution.

3. *The framework for fighting corruption in Benin*

12. In defining corruption, the focus was put on the following types of behaviour:

- Attempts to influence the decisions of a government official or public authority;
- An official's manifest dishonesty or lack of trust in an official in the routine performance of his or her duties;
- Conflicts of interest.

13. The above correspond perfectly to situations that are prevalent, and measures are required urgently to put an end to such practices, which can impede economic development.

3.1 *The legislative and regulatory framework for fighting corruption in Benin*

14. To fight effectively against this scourge, the Beninese Government formulated and enacted Act No. 2011-20 to fight corruption and other related offences in the Republic of Benin.

15. The Act's salient points include:

- The categories of persons concerned, including public officials and international civil servants working for international organisations;
- Criminalised acts;
- Preventive measures such as reporting and auditing personal wealth;
- Creation of a corruption-fighting body;
- Conflicts of interest;
- Tax deductibility;
- Money laundering;
- Political party financing and corruption during election campaigns;

- Searches, asset freezes, seizures and confiscations;
- Protection of whistle-blowers, witnesses, experts and lawyers;
- Influence-peddling;
- Computer and web-based crime and the prosecution thereof;
- Corruption in the private sector;
- Obstruction of justice.

3.2 Institutional framework

16. This fight has emerged as the primary demand of good governance because of corruption's disastrous effects on the economy and development in Benin. Accordingly, Article 5 of the aforementioned Act institutes a 13-member National Anti-Corruption Authority (*Autorité Nationale de Lutte contre la Corruption*, ANLC). ANLC members were appointed by Decree No. 2013-23 of 11 February 2013 and were officially sworn in on 15 May 2013.

17. The Authority's primary missions are to:

- Make full and comprehensive use of information on grievances and complaints relating to corruption-related events and related offences of which it is notified, and report them to the relevant State prosecutor;
- Review all legislation, regulations, administrative procedures and practices, provisions and customs and propose measures to rectify those that are found to be conducive to corruption;
- Dispense advice on how to prevent corruption to any person or any public or private body;
- Educate the public as to the dangers of corruption and their obligation to combat it, and harness the resources needed to do so;
- Lend assistance to the judicial authorities, when they so request;
- Co-operate with bodies pursuing the same objectives on the national, regional and international levels;
- Prepare periodic reports on risks of corruption within government.

18. Members of the National Anti-Corruption Authority are subject to background checks and are required to disclose their assets prior to appointment. They serve for a three (3)-year term of office, renewable once. They are appointed by decree of the Council of Ministers.

3.3 Brief summary of the implementation of anti-corruption activities

19. It should be emphasised that since the Authority was instituted, its members have been determined to accomplish their assigned tasks. Accordingly, they have:

- Initiated correspondence with members of the Government, requesting that they comply with the provisions of the said Act;
- Examined complaints with a view to setting the necessary orientations.

20. Nevertheless, according to the members of this fledgling institution, they have not yet been allocated the resources they need to perform their functions fully.

4. Connections between competition and corruption

21. Corruption is a crucially significant phenomenon which can be compared to an epidemic insofar as it is spreading rapidly throughout the country's political and economic system.

22. Corruption thwarts international trade and limits the possibilities for trade expansion. It distorts competition and jeopardises the principles of free and open markets. In itself, corruption stems from a failure or a by-passing of the existing system of competition.

23. Indeed, such manifestations of corruption as influence-peddling, favouritism, conflicts of interest, collusion, rigged tender offers or bids arranged in advance, among other practices, are signs that the mechanics of competition are not working properly.

24. In addition, it is a well-known fact that there is an inverse correlation between corruption and competition: the more corrupt a market is, the less genuine competition there is. In such cases, barriers are established that thwart the prerequisites of competition – market atomicity and transparency, product uniformity and factor mobility.

25. Practices deemed anti-competitive – State subsidies, cartels and concerted practices, abuse of dominant position and certain instances of corporate concentration – can mask acts of corruption, either subtly or flagrantly.

26. Given this scourge that rots the economy and has detrimental repercussions for all segments of the population, to make rules transparent and introduce competition within government are among the most important weapons to be used. It follows from this that any initiative to promote competition should fight against any and all situations that might prompt players to form coalitions that could prevent the market from working freely. It should encourage proper circulation of information about the characteristics of the market and how it works and prevent any barriers to the entry of willing newcomers or the exit of those wishing to leave.

27. In addition, any initiative to fight corruption should be geared to shielding government officials and public authorities from any outside influence in the performance of their duties, or to enhancing trust in and the integrity of those officials or authorities in the performance of their jobs.

28. Certain developing countries such as Benin would do well to institute reforms aiming to gradually introduce more competition to sectors of the economy that are still either monopolies or State-run. Accordingly, there should be greater competition between public- and private-sector services. As a result, the relaxing of restrictions on foreign trade, the elimination of barriers to entry into private-sector markets and the privatisation of public enterprises in a way that exposes them to competition are all measures that will help counter corruption.

29. Even so, opening economic sectors to competition is no panacea. In other words, it does not always suffice that an economy is largely open to competition to shield it from corruption. The nature of

the competitive system itself is of paramount importance – hence the need to promote competition law and policy that is tailored to local particularities.

30. Nor should the regulatory role of general or sectorial competition authorities be underestimated. Competition issues frequently arise when economic policy is being formulated and implemented. Policymakers in these areas should be attuned to any synergies or divergences that could arise from certain economic policy measures.

5. Conclusion

31. Insofar as corruption represents a threat for States in general and for businesses in particular, it is important that strong action be taken with a view to wiping out this phenomenon, which is becoming ever more prevalent.

32. For our part, the implementation of an effective competition policy is of paramount importance in better combating corruption, which has become an impediment to economic development.

33. Consequently, any reform that will open the economy to competition will also lessen the temptations of corruption.

34. This will make it more attractive for domestic and foreign investors alike to set up and operate economic activities without fear, leading in turn to greater tax revenue which will contribute to the infrastructure construction and job creation that will reduce poverty.