



ECOWAS REGIONAL COMPETITION AUTHORITY  
AUTORITÉ RÉGIONALE DE LA CONCURRENCE DE LA CEDEAO  
AUTORIDADE RÉGIONAL DA CONCORRÊNCIA DA CEDEAO

# Market Research and Analysis in Key Sectors of the National and Regional Markets of the ECOWAS for the ECOWAS Regional Competition Authority (ERCA)

## Synthesis Report

West Africa Competitiveness  
Program (WACOMP)

**CUTS**<sup>®</sup>  
International

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## 1. INTRODUCTION

### 1.1 Background

The economy of the 21st century is based on competition which has become an indispensable tool for the economic development of a region and a country. The economic progress observed in sub-regional organizations or at the national level is the fruit of healthy and fair competition based on well-established legal frameworks. The creation of the World Trade Organization (WTO) and the globalization of the economy have made it necessary to implement a competition policy that promotes rivalry between economic operators.

This is the background to the current CUTS International project to promote, maintain and encourage competition in West Africa and improve economic efficiency in regional production, trade and commerce. The project entitled “**Market Research and Analysis in Key Sectors of the National and Regional Markets of the ECOWAS**” was being implemented by CUTS International for the ECOWAS Regional Competition Authority (ERCA) through the West Africa Competitiveness Programme

(WACOMP). Under this project, a competition assessment in three sectors (Health and Pharmaceuticals, Food and Agriculture and Transportation) across fifteen (15) ECOWAS Member States was undertaken, resulting in 15 different country reports of the three sectors. The objective of the assessment was to help propose mechanisms for monitoring and assessing competition going forward, so as to inform the development and activities of the ERCA.

All the fifteen (15) ECOWAS countries were covered by the assessment.

Although the focus was broadly on these three sectors, the country reports further narrowed down the focus within the sectors, mainly focusing only on markets within the three broad sectors which are likely to have competition concerns, especially those with a cross border dimension which would be of interest to ECOWAS. As a result, there are some variations on the specific focuses in these broad sectors (Table 1).

**Table 1: Distribution of the Markets/Submarkets Assessed Across the Three Sectors by The Countries Including the Status of their National Competition Law**

Sector	Product/subsector	Countries
Agriculture	Rice	Burkina Faso, Cote D’Ivoire, Ghana, Guinea, Guinea Bissau, Liberia, Nigeria, Senegal, Sierra Leone, Togo
	Cotton	Togo, Mali, Benin, Burkina Faso
	Cocoa	Ghana, Cote D’Ivoire
	Onions	Gambia, Senegal
	Soyabean	Burkina Faso, Togo
	Groundnuts	Gambia
	Pineapple	Benin
	Fisheries	Cape Verde
	Cashew Nut	Benin
	Palm Oil	Sierra Leone
Transport	Road	Benin, Burkina Faso, Cote D’Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo
	Rail	Burkina Faso, Mali, Niger
	Air	Benin, Burkina Faso, Cape Verde, Cote D’Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo
	Water	Mali, Liberia, Guinea Bissau, Cape Verde, Benin

Source: Country Reports

The focus is generally similar with respect to the focus across the countries with respect to the pharmaceutical sector, which was mainly

focusing on the manufacture and retailing of drugs in the countries.

## 1.2 Objectives of this report

This report generally serves as a synthesis report of the main issues emanating from the 13 country reports. The objectives of the country reports were as follows:

- a. To assess the state of competition in the Agriculture, Transportation and Pharmaceutical sectors
- b. Identify competition issues in the sectors locally and also cross-border competition concerns
- c. Identify laws, policies and regulations distorting competition in the sectors

In the same vein, the objectives of this synthesis report is to highlight the key issues from the country reports that could inform the development and activities of the ERCA.

Specifically, the report highlights the following issues with respect to the competition landscape in the ECOWAS region:

- Identify concerns with respect to the market structure in the three sectors;
- Identify cases or reports of issues that raise competition concerns which could highlight possible anticompetitive practices that ERCA could follow up on to verify further;
- Identify regulatory and/or non-regulatory hurdles/barriers in regional free flow of trade and commerce in the given three sectors; and
- Make conclusion and recommendations based on implied domestic and regional competition advocacy agenda

## 1.3 National laws and competition authorities

It seems that **Benin, Ghana, Sierra Leone**, is the only country in the subregion that has no competition law or independent competition regulator.

**In Mali**, national competition laws cover the activities of both private and public enterprises, but in practice, competition authorities conduct very few investigations of public enterprises or state measures. There is no case law on the subject. National competition laws, while prescribing freedom of pricing and competition, all provide for derogation regimes, including the possibility of approval or authoritative pricing for certain products and services.

**Senegal** has put in place several instruments to regulate competition, including Law No. 94-63 of 22 August 1994 on prices, competition and economic litigation, which was partially repealed by Law 2021/25 of 12 June 2021 on prices and consumer protection. Under this new law on competition, counterfeiting, sales with a premium, sales without a prior order, sales and services with a "snowball" effect, fixed prices, abuse of weakness, wild sales and para-commercialism are explicitly prohibited. The

2021 law aligns with the principle of price freedom with two exceptions (price fixing and approval). It strengthens the institutional mechanism for regulating competition by creating two consultative bodies within the Ministry of Commerce: The National Consumer Council (CNC) and the National Observatory of Unfair Terms (ONCA).

**Gambia** is operating a liberal economy and as such the Gambian Government, in 2007 enacted the Competition Act which led to the establishment of the Gambia Competition and Consumer Protection Commission (GCCPC). The Commission is an independent public institution which became operational in 2009 and is mandated to enforce the Competition Act of 2007 and administer the Consumer Protection Act of 2014, which together aim to promote and enforce competition and enhance consumer welfare.

**Cote D'Ivoire**: In 1991, under pressure from donors, the Competition Act was passed, Law No. 91-999 of 27 December 1991. This Act was amended by Law No. 97-10 of 6 January 1997 to extend powers of prosecution to private

companies. In Côte d'Ivoire, there are two bodies responsible for implementing competition policy: – the Competition Commission, created by the Act of 27 December 1991; and – the Department of Competition created by decree of the Council of Ministers. The competition law like other laws became ineffective in Cote D'Ivoire due to the war that occurred in the country. Subsequently, a new competition law was enacted in November 2019 to allow the government to fix prices for consumer goods, following advice from the commission, with a specific deadline.

**Nigeria:** Federal Competition and Consumer Protection Act (FCCPA) 2019 regulates the competition and consumer protection space in Nigeria. The objectives of the FCCPA include to promote and maintain competitive markets in the Nigerian economy; promote economic efficiency; protect and promote the interests and welfare of consumers by providing consumers with wider variety of quality products at competitive prices; prohibit restrictive or unfair business practices which prevent, restrict or distort competition or constitute an abuse of a dominant position of market power in Nigeria; and contribute to the sustainable development of the Nigerian economy.

**Liberia:** Liberia enacted a Competition Law in 2016 to cover all anti-competitive behaviour, unfair trade practices and other similar conduct or activities that have direct, substantial and reasonably foreseeable effects on the Liberian Economy within or outside Liberia.

**Cape Verde:** In terms of legal framework, Cape Verde in 1999, established Decree-Law 2/99 of February 1, establishing the defense of competition. This Decree-Law would be revised and improved in 2003, through Law 53/2003 of November 24, which aims to "safeguard fair competition among market operators, repress practices that restrict competition and promote fair competition."

**Gambia:** The Gambian Government, in 2007 enacted the Competition Act which led to the establishment of The Gambia Competition and Consumer Protection Commission (GCCPC). The Commission is an independent public institution which became operational in 2009 and is mandated to enforce the Competition Act of 2007 and administer the Consumer Protection Act of 2014, which together aim to promote and enforce competition and enhance consumer welfare.

**Table 2: Countries and the Status of their National Competition Law**

Benin	No	No	Member UEMOA and ECOWAS
Burkina Faso	Law n°016-2017/AN of April 27, 2017 on the organization of competition in Burkina Faso	CNCC	Member UEMOA and ECOWAS
Cape Verde	Decree-Law 2/99 of February 1 as revised and improved in 2003, through Law 53/2003 of November 24	Decree-Law	ECOWAS
Cote D'Ivoire	Law No. 91-999 of 27 December 1991. This Act was amended by Law No. 97-10 of 6 January 1997 to extend powers of prosecution. A new competition law enacted in November 2019 allowed the government to fix prices for consumer goods, following advice from the commission, with a specific deadline.	The Competition Commission	Member UEMOA and ECOWAS
Ghana	No	No	ECOWAS

Gambia	Competition Act (Act No. 4 of 2007) An Act to promote competition in the supply of goods and services	GCC	ECOWAS
Guinea	No	No	ECOWAS Member
Guinea Bissau	Competition bill approved by the Council of Ministers on March 15, 2022, but has not yet entered into force.		Member UEMOA and ECOWAS
Liberia	Competition Act of 2016		
Mali	Law No. 2016-006 of February 24, 2016 on the organization of competition		Member UEMOA and ECOWAS
Niger	Law No. 2019-56 on the organization of competition in Niger		Member UEMOA and ECOWAS
Nigeria	Federal Competition and Consumer Protection Act 2019	(FCCPA)	ECOWAS
Senegal	Law No. 94-63 of August 22, 1994 on Prices, Competition and Economic Disputes, partially repealed by Law 2021/25 of June 12, 2021 on Prices and Consumer Protection.	National Consumer Council (CNC) and the National Observatory of Unfair Terms (ONCA)	Member UEMOA and ECOWAS
Sierra Leone	No	No	ECOWAS
Togo	Law N°99-011 of December 27, 1999 on organization of the competition in Togo;	the Administrative Authority in charge of the (DCIC); the creation of the National Competition and Consumption Commission (CNCC) (CNCC), provided for by law N°99-011 and enshrined in decree N°2001-208/PR of 16 December 2001.	Member UEMOA and ECOWAS

#### 1.4 Regional competition agreements

At the regional level, **the WAEMU adopted in 2002** a set of three regulations and two directives on competition law. The regulations concern anti-competitive practices such as anti-competitive agreements, abuse of dominant positions, state aid and anti-competitive practices attributable to states (I), procedures applicable to agreements and abuse of dominant positions (II) and state aid (III). As for the directives, one concerns the transparency of financial relations between Member States and public enterprises and between Member States and international or foreign organizations, and the other concerns

cooperation between the Commission and the national competition authorities of the Member States.

This directive was issued by the WAEMU Commission for the application of articles 88, 89 and 90 of the WAEMU treaty, dealing with competition. Under the terms of the latter directive, the WAEMU Commission has exclusive jurisdiction over anti-competitive practices within the WAEMU area. This decision, which dates back more than 20 years, considerably limited the scope of application of national competition authorities, which were thus

excluded from the fight against cartels, abuses of dominant positions and merger control.

The **ECOWAS** community mechanism consists of two Supplementary Acts adopted at the thirty-fifth ordinary session of the Conference of Heads of State and Government in December 2008. One concerns community competition rules and their application within ECOWAS and the other concerns the establishment, attribution and functioning of the ECOWAS Regional Competition Authority. From a substantive point of view, the ECOWAS Supplementary Act covers practically the following

The first concerns the establishment of the Community Competition Rules, which has the same anti-competitive practices as the other texts (national and WAEMU community), although there is a slight difference in the terminology used in the two community texts. The other concerns the establishment, powers and operation of the ECOWAS Regional Competition Authority (ERCA). Article 3 of this Supplementary act provides for cooperation with national, community or private law structures (NGOs, associations, groups of individuals) for the implementation of the obligations arising from the Supplementary act relating to competition.

## 2. CONCERNS WITH RESPECT TO THE MARKET STRUCTURE

The structure of the market where the buyers and sellers interact to determine quantities bought and sold and prices is generally the main avenue through which any anticompetitive practices could have some foundation. Market structure is not only about the number of players that are active in a particular market but is also about the relative power or strength that each player could have over pricing and supply decisions. One indicator of market structure is the degree of market concentration, which refers to the extent

to which the market is dominated by a few large players. It is therefore a function of the number of firms in a market and their respective market shares. Where the market is dominated by a few large firms, or is monopolised, then such markets are highly concentrated and can be easily abused by the dominant firms to engage in anticompetitive practices. It is in this context that the markets in the ECOWAS region under the three sectors can be assessed.

### 2.1 Food and Agriculture Sector

A look at the various subsectors across the countries reflects that while the food and agriculture sector is basically operating at conditions of too many players offering services in uncoordinated manner, there are some few cases where the structure of the sub-markets could be a concern. These include the following crops/value chains:

#### Cotton

**In Benin**, there are three main agricultural sectors: cotton, cashew nuts and pineapples. For

cotton, the Interprofessional Cotton Association (AIC) brings together the professional families of cotton producers, importers and distributors of inputs and ginners. It is within this framework that the price of inputs and seed cotton is negotiated. More recently (2012 to 2016), we are witnessing the return of the State in the management of the Benin cotton sector with the problem of investor security. Five cotton ginning companies share the ginning market, but one of them, the Société pour le développement du coton, is present throughout the country and holds about 81% of the market share.

**Table 3: Cotton ginning companies in Benin and their market share**

Cotton Development Company	81%
Label Coton du Bénin (Aiglon Group) in Paouignan	6%
Benin Cotton Ex Marlan's Cotton industries in Nikki	6%
Société industrielle d'égrenage de coton du Bénin in Savalou	4%
Sino Beninese Company of Cotton Processing in Parakou	3%

In **Togo**, cotton remains the leading cash crop and the sector continues to recover from the crisis it experienced in the 2000s. The cotton market in Togo is structured around the main actors, which are the producers (some 150,000 cotton growers grouped together in the National Federation of Cotton Producers' Groups (FNGPC) and the New Cotton Company of Togo (NSCT), a mixed company, 60% owned by the Togolese State and 40% by the FNGPC until the end of 2020. NSCT has a legal monopoly on the purchase of all seed cotton production, ownership of the entire cotton ginning infrastructure and exclusive rights to the sale of finished products. All cotton lint is exported, while the export of seed cotton is prohibited. At the end of 2020, the state, which had been the majority shareholder for some 40 years, became a minority shareholder, having sold 51% of its shares in NSCT to the Singaporean giant OLAM. This has led to a shift from a state monopoly to a private monopoly. Thus, the sale of cotton will be the monopoly of a mixed economy company in which the private operator OLAM will have a majority stake by the end of 2020. The Olam International Group is expanding rapidly and is extending its influence in the agri-food sector in more than 60 countries. Founded in 1989 in Nigeria, the group is now majority owned by Japan's Mitsubishi and Temasek, the Singaporean sovereign wealth fund. Despite several successes, such as in Chad, where the group has succeeded in revitalizing the cotton industry, Olam International is regularly accused of asphyxiating its competitors by waging a low price war and obtaining quasi-monopoly situations. The ginning market in **Togo** has the Société Togolaise du Coton (SOTOCO), a state-owned company and the main operator in the sector, which has always held a monopoly on the purchase of seed cotton from producers grouped together in the Groupements de producteurs de coton. Although there are three private companies involved in ginning, these companies must obtain seed cotton from SOTOCO, with whom they compete for ginning activities.

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<sup>1</sup> As a guide, where there is an HHI of below 1000, then the market is not concentrated; where the HHI is between 1000 and 1800, then the market is

In **Mali**, the cotton value chain through the state-owned Compagnie Malienne de Développement des Textiles (CMDT): it provides inputs to producers, manages the provision of credit, buys the product from producers at fixed prices, and processes and markets the final product. Cotton production declined steadily between 2005 and 2008, mainly due to lower international prices that discouraged production. This decline led Malian producers to sell their cotton at below cost price. In response to this downward trend, the government implemented a reform program called the Lettre de politique de développement du secteur coton, aimed at boosting cotton production through higher producer prices and input subsidies. This measure led to an increase in cotton production between 2009 and 2019 at an average growth rate of 14% due to the expansion of the harvested area (15% on average) while yields increased by less than 0.5% on average. However, this mechanism has led to dissuasive prices in 2010-2012 and 2017-2018 because the increase in reference prices was not passed on to the domestic market since prices are set at the national level. For cotton, the main problem is the mechanism for setting cotton selling prices, which is still under the control of and imposed by the Compagnie Malienne pour Développement du Textile (CMDT).

### Rice

The concern in **Cote D'Ivoire** arises in the imported rice market, which has one player, Societe de Distribution de toutes marchandises Cote d'Ivoire (SDTM CI) which has a market share of 52%, leaving the remaining four players to share the remaining 48%. Such a dominance by only player creates a monopoly situation, which can be easily abused if the competition authorities do not closely follow the market.

In the market for corporate rice processing in **Nigeria**, the Stallion Group is the clear market leader, with a market share of about 40%. The market is highly concentrated with a concentration ratio (Herfindahl-Hirschman Index (HHI)) of 2,399, which is subject to competition concerns<sup>1</sup>. With the venture of a few large

moderately concentrated; and where the HHI is above 1800, then the market is considered to be highly concentrated.

conglomerates into rice processing, and the adoption of contract/out-grower arrangements with small-scale farmers, the market structure has also become prone to buyer power abuse, as contract farming and out-grower schemes are based on unequal bargaining power tilted in favour of the conglomerates. The Nigerian rice market thus also deserves some monitoring.

Although rice is a staple food in **Sierra Leone**, local production is almost negligible with imports largely satisfying demand. However, about 44% of the rice import market in Sierra Leone is controlled by one company, the Commodities Trading Company. The rice importation market is highly concentrated with an HHI of 2235.

In **Guinea (Conakry)**, particularly the rice sub-sector, competition problems include the supply of fertilizer to farmers in Guinea is largely dependent on the public administration during the various agricultural seasons, with little participation from the private sector. Indeed, the fertilizer value chain is purchased by the government and distributed and resold to farmers for rice cultivation in Guinea's regions. However, after the September 5 event, the CNRD through the Ministry of Commerce, Industry and Small and Medium Enterprises broke this monopoly. There is more competition for imports of rice, sugar, and other food products.

In **Guinea Bissau**, government intervention limits free competition, which means that there are major barriers to the entry of new competitors (importers) caused by the processes for accessing import authorization. The government, in order to raise revenue, imposes a tax on rice imports. In the absence of competition laws to regulate the sector, a group of entrepreneurs is forcing the government to take regulatory action to prevent new competitors from entering the market. The strong influence of importers is driving up prices at the consumer level at a time when there is no supply of domestic production. It should be noted that a small group of large companies dominate this activity. In the absence of national standards, regulation of the sector is defined by joint dispatches from the ministers of trade and finance.

The rice sector in **Senegal** is seen as a strategic sector for ensuring food security in Senegal.

*Seeds:* The State of Senegal is largely involved in seed management. It ensures the maintenance of the vats and the production of pre-basic seeds, the certification of seeds of all categories, the programming of production, the training of producers and seed agents, the selection of seed producers, the conditioning of seeds and the storage of seeds. The State is involved in the sale and distribution of seeds and subsidizes the prices (up to 50 to 70%) according to regional production objectives, planned plantings and recommended fertilizer doses. The private sector is not excluded from seed management. It intervenes in the production of basic seeds, in the production of 1st and 2nd generation seeds and in marketing. The rice production system in Senegal is mostly covered by small-scale family farms. In parallel to these family farms, agriculture is appearing business based on an investment character and a quest for profit. The value chain includes several actors at different stages from production to consumption. It is composed of several actors including public services, importers, producers, processors, traders (wholesalers, semi-wholesalers, retailers), associations and financial institutions. Public seed control and certification services, the Seed Division (DISEM) and the Regional Directorates of Rural Development (DRDR) DRDR provide public seed quality control services. Their mission is to provide technical assistance to licensed seed operators. The objective of this assistance is to enable operators to provide producers with quality seeds in accordance with the legislative and regulatory provisions in force. Placed under the authority of DISEM, seed sorting and conditioning centers are also set up to intervene in seed certification. This system ensures that if the seeds are not verified or produced by approved operators, they will not be certified.

*Importers:* The business of importing broken rice is mainly controlled by the Association of Senegalese Importers (UNACOIS). There are two types of importers in this sector. On the one hand, importers with financial capacity and significant bank credit. On the other hand, those who associate themselves with semi-wholesalers by making financial contributions to complete the

necessary financing at the bank level. They develop more in the informal sector. This alliance was created to reduce risks, overcome restrictions and maximize profits.

*Traders:* They are the key players in the chain linking processors and consumers. Among them, there are wholesalers, semi-wholesalers and retailers. When the sector was liberalized (1996), there were more than forty importing wholesalers. Nowadays, the market share is increasingly limited and the number has decreased to 7 wholesalers. Some wholesalers have been forced to organize themselves to stay in the market segment and thus become semi-wholesalers. Today, the sector is characterized by a situation of monopoly and market concentration. In 2004, three importers controlled 70% of total rice imports (in 2007, four importers controlled 66% of imports). Wholesalers are often present in three market segments. They can intervene in all aspects of distribution, having monopolized the import of this essential product. Their influence depends on the extent of the network in the retail sector. Markets analyzed from a network perspective show that socially connected actors develop strategies based on available space and not on price. Retailers are important links in the distribution chain. They allow consumers to access products through a functional and efficient network. This is a difficult part of the market because it is filled with representatives of different nationalities working in an almost completely informal environment.

#### *Exclusivity in seed production in Senegal*

In Senegal, rice seed is subsidized by the state. No competition is possible on the basis of price. Because of the strategic position that this commodity has on social stability, the rice sector benefits greatly from state intervention. Seed production is handled by the Institut National de Recherche Agricole (ISRA). This institute has exclusive rights to seed production. Seed certification is the responsibility of the Seed Division (DISEM). This institution has exclusivity. The intervention of the private sector in the seed business is limited. Their activities are limited to Seed conditioning - Seed storage - Marketing (purchase and sale).

#### *Informal domestic production and its effect on price*

The supply, distribution and marketing of local rice on the national market is informal. The sector is exclusively controlled by an informal private sector. This lack of formality could therefore influence the final price paid by the consumer or the price paid to the producer. In the case of paddy markets, some farmers may decide to sell their paddy to private buyers who offer higher prices. Prices may also increase due to mark-up at various stages of the supply chain. Rice prices vary from production to marketing. On the cost breakdown, there is indeed a large variation. If the buyer does not commit to processing the paddy, some retailers and semi-wholesalers do, and this involves additional processing costs.

As regards the rice sector in **Togo**, the dominant players on the market are large foreign companies, such as OLAM International and Louis Dreyfus, as well as the Togolese companies Mawuynon, Elisée Cotrane, etc. The company Etablissement Mawuynon has a monopoly on a certain range of imported rice in the sub-region.

#### **Cocoa**

Similar market structure concerns arise in the cocoa processing market in **Cote D'Ivoire**, where three firms, Barry Callebaut, Cargill and Cemoi have a combined market share of 89% (CR3) which means that they have the power to influence the domestic cocoa industry regardless of any other player who is in the market. Given that two of these are actually giants in the cocoa sector globally (Barry Callebaut and Cargill have a share of 73% between the two of them), there is need for ERCA to monitor whether such dominance is not being abused.

#### **Sugar**

The market structure for sugarcane cultivation in **Nigeria** is also subject to concerns, as it is dominated by three conglomerates that have invested heavily in the industry and are now vertically integrated within the value chain with operations covering cultivation, milling, refining, and distribution. Dangote Sugar has 73% share of the market in sugarcane cultivation, making the market highly concentrated with an HHI of 5,760. This market structure is also carried over to the

market for sugar milling which is also highly concentrated with an HHI of 4,261, with the leading player controlling 61% of the market. The sugar refining market also follows the same pattern, which is highly concentrated with an HHI of 3,896. This makes the sugar value chain in Nigeria prone to collusion and coordinated behaviour.

## Rubber

In **Liberia**, the main area of concern in the agriculture sector is in the large-scale rubber plantations, where Firestone Natural Rubber Company is the leader in Liberia's rubber market and the other concessions, to a large extent follow its lead in pricing. This oligopolist market structure has the potential to give rise to competition concerns.

## Onion

In **Senegal** several actors located in the Niayes area and the Senegal River Valley work in onion production. They organize themselves within associations that are frameworks for exchange and consultation in order to federate their strength and better defend their activity and interests. Two major associations exist: the Association des Producteurs d'Oignon de la Vallée (APOV) and the Association des Unions Maraichères des Niayes created in 2000. Both associations are composed of GIEs, cooperatives, committees and other local structures organized around various production areas. Interprofession of the Onion of Senegal (IPOS): It was born in 2014 and is composed of producers, traders, consumers, merchants among other actors of the sector. They meet regularly to discuss production issues and marketing prospects. *Importers:* Onion imports into Senegal come mostly from Europe, particularly the Netherlands and Belgium. They follow a defined schedule due to the policy of protecting the local fabric in force. It is only from July that the market is open to imports until the first two months of the following year. In Senegal, some importers are also involved in promoting local onions by financing producers in their production campaigns. These importers participate in the marketing of onions, as they are lessors of a large part of the production. *Wholesalers and retailers:* These are the traders in the industry. The wholesalers buy from importers

and producers depending on the period. In turn, they supply resellers and retailers who supply households directly from markets, supermarkets and stores. *Coxeurs:* They play the role of intermediaries, commissioners and mediators between the producers and bana-bana, in rural and urban markets. They play a significant role in onion distribution. Their activities consist of receiving the merchandise brought by the producers, finding buyers and negotiating prices between the producers and the bana-banas.

### *Government influence on prices*

Price is a very important factor in the onion marketing system in Senegal. Local production faces strong competition from imports, especially during peak harvests. This competition tends to drive down market prices, which is detrimental to local producers. Since 2003, the system of seasonal protection against imports has made it possible to control the quantity of onions on the market and to keep price fluctuations under control. In its mission to regulate the agricultural product market, the ARM has put in place price floors and caps to control the level of prices. Price competition in the market is almost non-existent. Prices are defined and regulated by the government. No competition on quality is possible. Whatever the quality of the onion, the price per kilogram is fixed upstream. In particular, pricing based on a minimum quality standard completely eliminates the likelihood of price competition or product differentiation and discourages farmers from investing in quality above the required minimum quality standard. In other words, the government price mechanism can distort farmers' incentives to invest in productivity-enhancing practices.

### *Public sector dominance in seed and subsidy*

The supply of seeds to farmers in Senegal is largely dependent on the public sector with little participation from the private sector. Seed production is the exclusive domain of the Institut Sénégalais de Recherches Agricoles (ISRA). The Institute distributes the seeds to selected farmers for propagation. Seed certification is handled by the Seed Directorate of the Ministry of Agriculture. This exclusivity hinders competition

and limits the private sector in the production and marketing of quality seeds.

### *The safeguard measure*

Faced with foreign competition in the sector through imports, the Senegalese government set up the MRA in 2002 to control the agricultural sector. In 2003, Senegal used the special safeguard clause defined in the WTO agreements to set up a seasonal protection system against onion imports. This led to a freeze on imports from July 1 to August 4, 2003, after consultation among industry stakeholders. In 2020, the import freeze took effect from January 20. It is necessary to recognize that the import freeze is a major impediment to competition. During the freeze periods, there will be no competition on the market. The local production will have the exclusivity of sales on the market even if the quality leaves something to be desired.

### **Edible Oil**

**In Burkina Faso**, the CNCC has received several referrals for malfunctions in the food sector: In November 2017, the Association Burkinabé des Consommateurs des Services de Communications Electroniques (ABCE) files a complaint against the Burkinabe Federation des Patrons des Boulangeries, Pâtisseries et Confiseries (FBPBPC) and the Union des Founders of the Bakeries in Faso (UFBF) for **agreement**; In May 2018, Société Faso Huilerie SARL filed a complaint with the CNCC for **competition** by its rival in the marketing of edible oil, In November 2020, the Compagnie Générale du Faso (CO.G.FA) referred to the CNCC with respect to its exclusivity clause and monopoly of JUMBO broths; and in December 2020, a competitor of CO.G.FA filed a complaint with the

CNCC against the company COGFA SA for anti-competitive agreements in the sector the distribution of "jumbo" broths in Burkina Faso; etc.

### **The soybean sector**

Soybean was introduced in **Togo** in the 1980s, with the support of the German cooperation GIZ (GTZ at the time) with the objective of providing a protein food supplement to reduce malnutrition. It is from the 2010s onwards that soybean production has developed to fill the gap in the source of income for producers, left by the difficulties of the cotton sector during the 2000s. Various actors are now active in the soybean sector in Togo: Some 20,000 soybean producers are members of the Fédération Nationale des Sociétés Coopératives de Producteurs de Soja (FNCPS), about 50 soybean processors are members of the Association Togolaise des Transformateurs de Soja du Togo (ATTST) and about 70 traders/exporters are members of the Association Nationale des Commerçants Exportateurs du Soja au Togo (ANCES Togo). In terms of competition, certain barriers to entry (various conditions and authorizations from the interprofession, registration fees and bank guarantees) are required, while the informal sector enjoys unfair competition, bypassing all these restrictions. Moreover, the establishment of floor prices throughout the country amounts to creating a price-fixing agreement, not taking into account the real differences in cost prices (transport, various costs, etc.). Moreover, the Singaporean group OLAM, which is also interested in the Togolese soybean sector, could find itself in a dominant position in this sector as well.

## 2.2 Health and Pharmaceuticals

The demand for health products is generally price inelastic as health services are a priority which both the rich and poor will always demand. The sector is however not immune to anticompetitive practices, which can be easily facilitated by the structure of the producers and suppliers. There are some concerns with respect to the market structures in health and pharmaceuticals across some of the ECOWAS countries.

The main pharmaceutical supplier in **Cape Verde** is EMPROFAC, a company wholly owned by the state. Founded in 1979 and transformed into a joint stock company in 1997, EMPROFAC holds the exclusive concession for the importation and

distribution of medicines in Cape Verde<sup>2</sup>. At the production level, the only company licensed to produce medicines in Cape Verde is INPHARMA, a company owned 40% by the State (through EMPROFAC) and the remaining 60% by private shareholders. Although this monopoly at production is diluted by imports, such dominance can be easily felt if government policy tries to protect the local industry by controlling imports and increasing other trade barriers.

In **Cote D'Ivoire**, the market share of the top four local pharmaceuticals industries is about 98%, which means that the pharmaceutical industry in Cote d'Ivoire is highly concentrated. The leading two firms control about 68 % of the market, underlining that it is oligopolistic. It is highly prone to anticompetitive practices by the leading firms. A further concern is that the Ivorian wholesale pharmaceutical industry is also highly concentrated, with the two leading players controlling 65% of the market. It is possible for the producers and wholesalers to easily coordinate their behaviour for both vertical and horizontal restraints to develop.

In **Benin**, the government reform in place since 2016 has created the Beninese Agency for Pharmaceutical Regulation (ABRP), which is a body responsible for publishing and ensuring the availability of funding and the preparation of tender documents for public contracts. It is made up of four units:

- The information systems management, planning and monitoring and evaluation unit,
- the control and management unit,
- the quality management system cell; and
- the internal audit unit (CAI).

All of these cells are intended to regulate the sale of pharmaceuticals and to control pharmaceutical products of dubious quality in the very sensitive health sector. Benin is considered to be a major area of fake drug trafficking. That is why the Government has intervened to regulate this sector, where it has granted approval to six wholesalers recognized exclusively in the

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<sup>2</sup> EMPROFAC has a *de facto* monopoly on the importation and distribution of medicines in Cabo Verde. However, doubts have been raised about the *de jure* monopoly: allegedly, a Decree-Law published in 2013 reviewing the legal framework for foreign trade has explicitly revoked the Decree-Law that gave

distribution in Benin of medicines from all laboratories outside the country. As far as pharmaceutical industries are concerned, there are only three companies in Benin, which are very insufficient to meet the demand of hospitals. Benin is therefore obliged to obtain pharmaceutical products from abroad. As a result, the health and pharmaceutical sector remains problematic despite government reforms. Thus, competition does not seem to exist in this field.

In **Burkina Faso**, the pharmaceutical sector remains highly regulated. The production, importation and marketing of pharmaceutical products are carried out under the strict supervision of the authorities in charge of public health and trade. For this, the procedure for reviewing and setting prices of Essential and Generic Medicines and medical consumables is governed by Joint Order n°0305/MCIA/MS of August 1, 2019 on the creation, assignment, composition and functioning of the National Commission for setting and negotiating prices of essential generic medicines and essential medical consumables and other public health products in Burkina Faso. In practice, this commission holds its work in workshops under the co-chairmanship of the General Directorate of Regulation and Price Control, and the Agency of the National Pharmaceutical Regulation (ANRP) with the participation of the representatives of the Central Purchasing Office for Essential and Generic Drugs (CAMEG), civil society and the Ministry of Health. The work is sanctioned by the negotiation and the elaboration of two draft decrees all related to the setting of prices of the concerned products, and by a report. The reasons for the adoption of the decrees are to ensure the health of the population by facilitating the financial accessibility of essential generic drugs (EGD) and medical consumables. Fixing the prices of products or services in derogation of the principle of price freedom is based on Articles 5 and 6 of the above-mentioned Competition Act, which provide that: "[n]otwithstanding the

EMPROFAC the exclusive monopoly on the importation and distribution of medicines. This issue is currently being analyzed by the Regulatory Entity (ERIS) for clarification.

provisions of Article 4 above, in the sectors of activity. In the event of a crisis in the economy or in localities where price competition is limited due either to a monopoly situation or lasting supply difficulties, or to legislative or regulatory provisions, the minister in charge of trade, after consulting the National Competition and Consumer Affairs Commission established by Article 7 below, may regulate prices under conditions set by decree". All draft texts must be submitted to the CNCC for compliance review with national and regional legislation before approval. The last one was transmitted under the letter number n°001-2021/S/CNCC/P of April 02, 2021 from the Minister of Industry, Commerce and Handicrafts, requesting the opinion of the Commission on two draft joint orders, one of which sets the prices of medicines and the other one fixing the prices of medical consumables essential for the year 2021.

In **Guinea Conakry**, for **pharmaceutical products**, the main problems identified are

- (i) Lack of an active policy to encourage the establishment of local industry;
- (ii) The dysfunctional pharmaceutical supply and quality control, on the one hand, and the low solvency of demand (poverty, lack of solidarity mechanisms), the high selling price of products, and the insufficient rate (27%) of exemption from customs duties and import taxes on medical devices, on the other hand, considerably reduce the public's accessibility to quality medicines.
- (iii) The government does not regulate the prices of private medicines and does not negotiate the price of medicines with pharmaceutical companies (iii) Alongside the official supply structures, the informal smuggling sector feeds the illicit market for pharmaceutical products.

Besides, only one company, Sodongpharmagui, of Chinese origin, produces locally about 40 formulations only in tablet form. This company is exempt from certain taxes and provides the National Directorate of Pharmacy and Laboratory (DNPL) with analysis and quality control reports on its production.

In **Guinea-Bissau**, there are three pharmaceutical companies (Saluspharma, Guipharma, Alliancepharma) that operate as duly authorized

wholesalers and retailers, but they face problems of unfair competition from the informal sector, due to the lack of border controls and the clandestine entry of medicines into the country (from neighboring countries?? Which ones?).

The pharmaceutical industry in **Mali** is almost non-existent. The pharmaceutical market is **monopolized by imports of expensive drugs**.

The country's supply is essentially done through import structures and national production structures. National production is ensured by the Usine Malienne de Produits Pharmaceutiques (UMPP), which is a state-owned enterprise inaugurated in November 1983 as a joint investment between Mali and China. Unfortunately, this company is currently experiencing structural and financial difficulties and is on the privatization agenda. In addition to UMPP, the traditional medicine department produces plant-based medicines in several forms (syrup, powders and ointments). A second local manufacturer, Chinese-owned, is Humanwell Healthcare. Medicines are imported into Mali through the Pharmacie Populaire du Mali (PPM), which is a state-owned structure, but also through private wholesalers and donations provided by development partners. The PPM is a financially autonomous public establishment of an industrial and commercial nature. The PPM ensures the purchase, supply and distribution of essential medicines throughout the country. The sale of medicines in Mali is reserved only for the personnel of the Pharmacists as well as imports are subject to a marketing authorization issued by the Ministry of Health. However, the market for pharmaceutical products in Mali is faced with the problem of the informal drug circuit, which continues to proliferate. The medicines used through this circuit are sold by untrained vendors in village and neighborhood stores to fill the gap in supply for certain medicines. This circuit is much sought after by low-income segments of the population, disregarding the risks they may entail. It is estimated that MPP accounts for less than 50% of the public pharmaceutical market share and that the illicit drug trade accounts for about 15% of the market. It appears that the mode of governance in Mali is an obstacle to the development of partnership relations between the private and public sectors.

In Niger, the pharmaceutical sector was characterized by the existence of a state-owned wholesale distributor: the National Office of Pharmaceutical and Chemical Products (ONPPC). This structure, which had civil status and financial autonomy, had a monopoly on the import and supply of pharmaceutical and chemical products, dressing materials and medical and surgical equipment to State, local government and public institutions. The private sector (very few private pharmacies) could obtain supplies from the ONPPC as well as from other suppliers, such as wholesale distributors and manufacturers from the sub-region and Europe. As for the cooperative and private depots, they could only obtain supplies from the ONPPC and its popular pharmacies. Ordinance N 97-002 of January 10, 1997, on pharmaceutical legislation has thus lifted the monopoly of the ONPPC allowing other establishments to import and distribute wholesale. Today, the supply system is composed of: - the ONPPC and its 3 regional depots (Niamey, Tahoua and Zinder); - eleven supply centers and two branches. However, the importation and removal of medicines and other pharmaceutical products by legally authorized persons is still subject to prior authorization from the Directorate of Pharmacy, Laboratories and Traditional Medicine.

#### *Structure of the Pharma Sector in Niger*

**a.** The National Office of Pharmaceutical and Chemical Products (ONPPC)

Created by law 62-36 of September 18, 1962, its mission is the importation and distribution of essential generic drugs, pharmaceutical specialties, and essential medical devices. The ordinance N°99-046 of October 26, 1999 has set it up as a wholesaler, distributor, retailer (G.R.D). The office has three (3) regional stores in Niamey, Zinder and Tahoua; forty-four (44) popular pharmacies.

Production Unit: This is the Société Nigérienne des Industries Pharmaceutiques, abbreviated SONIPHAR, born from the dismemberment of the Office National des Produits Pharmaceutiques et Chimiques, SONIPHAR was created on July 1, 1998 with a capital of 100,000,000 F CFA. It produces: dry forms: tablets: acetyl salicylic acid,

paracetamol, chloroquine etc... Salt sachets for oral rehydration; massive solutions; syrups. This unit of production meets today difficulties of functioning bound to the lack of financial resources.

**b.** The private pharmaceutical sector, consisting of nine private wholesalers:

COPHARNI-SA, LABOREX-NIGER, PHAMATECH-SA, MULTI-M NIGER-SARL, PHAMABEST SA, DAHAICO-SA, SAPHAR-SA, REALAB-PHARMA and PHARMA-STORE. Two (2) private wholesalers (MULTI-M NIGER SARL and PHAMATECH SA) have regional stores in Maradi, including a production unit (Société Industrielle Pharmaceutique (SIP)), two biomedical analysis laboratories, and seventy-eight pharmacies, fourteen of which are in the interior of the country. In total, there are ten wholesale companies in Niger, including one state wholesaler (ONPPC) and nine private wholesalers. Of these ten wholesale companies, six deal exclusively in generic drugs and medical consumables. The rest, four wholesalers, deal in both specialties and generics. This proves the effective implementation of the fundamental option of the drug policy, which consists in providing essential generic drugs at low prices to the population.

**c.** Parallel or informal markets: Pharmacists (both dispensing and wholesale) are often involved in supplying the parallel market and purchasing drugs from illicit suppliers when their orders have not been met by official wholesalers.

In Senegal, the policy in this area aims to ensure Senegal's pharmaceutical sovereignty by 2030. This vision is consolidated by the ambition to be a major player in the wholesale export of pharmaceutical products made in Senegal. The pharmaceutical sector falls under the Ministry of Health and Social Action (MSAS). It is regulated by the Directorate of Pharmacy and Medicines (DPM) under Decree 2020-936 of April 3, 2020 on the organization of health and social action (MSAS). Its mission is the preparation, implementation and monitoring of policy and programs in the field of pharmacy, medicines and other health products. The prices and sale of medicines in Senegal are regulated by Inter-

Ministerial Order No. 188/MSHP/DPM dated January 15, 2003. This text sets the method for calculating the price of sale to the public of medicines, products and objects included in the pharmaceutical monopoly. Market structure in Senegal: The Senegalese market is divided into two groups of pharmaceutical suppliers, the private commercial sector and the public sector. Together they ensure the availability and geographical and financial accessibility of quality pharmaceutical products to the population, in accordance with the legal provisions in force. The first is mainly represented by private importers and the second by the Directorate of Pharmacy and Medicines (DPM). The supply chain goes from the Directorate of Pharmacy and Medicine to the private warehouses and health centers (see table). In Senegal, the public sector supplies the market at about 20% compared to an average of 80% for the private sector. In addition to this formal circuit, there is the informal market for medicines. Although difficult to quantify, the illicit market remains minimal in terms of marketing volume.

#### *Structure of the pharmaceutical market in Senegal*

The Senegalese market includes 5 importers: PNA, Laborex, Sodiharm, Duopharm and Ubipharm. Private wholesale distributors are either importers or simple resellers. The private wholesaler-distributor is the intermediary between the pharmaceutical laboratories and the pharmacies. The pharmacies are supplied by 4 approved wholesalers, which are: Ubipharm, Laborex, Sodipharm and Duopharm. Local manufacturing units cover an average of 5-10% of national needs. However, a good part of this share is exported to certain WAEMU countries. In Senegal, more than 90% of drug needs are supplied by the external market. Although these companies provide local production, some of them are not Senegalese-owned companies. Westafrica pharma is a subsidiary of Sothema, a Moroccan pharmaceutical company. The Pasteur Institute of Dakar is a French-owned company with French capital. Médis is the only Senegalese-owned pharmaceutical company. In January 2020, the company stopped its activities due to financial difficulties. It benefited from the support

of the State of Senegal, which injected 5.5 billion CFA francs to relaunch its production activities. For the private sector, the importers/wholesalers/distributors are: Laborex, Sodiharm, Duopharm and Ubipharm. They supply the market and have the following shares: Ubipharm 33%, Laborex 32%, Sodipharm 18% and Duopharm 17%. Ubipharm and Laborex dominate the drug market. There is a tie between the two companies. In 2020, 78.6% of drug imports came from France. The latter is the main supplier of the Senegalese drug market. India is in second place with 7.6% of imports. Between 2019 and 2020, Senegal's total pharmaceutical imports increased by 6.12%. This increase is justified in part by the global health situation (COVID 19). Senegal also participates in global exports of pharmaceutical products. Apart from France, it exports exclusively to the following countries of the sub-region and African countries. France is the main destination for Senegalese pharmaceutical products. It represents 42.9% of Senegalese exports in 2020. Nigeria comes second with 31.2%. Mali is an important partner of Senegal in the field of pharmaceutical products. Indeed, 8.2% is destined for its market. In 2020, Senegal's exports fell drastically by 60.9%. This situation is due to the health emergency during the COVID 19. Exports that were destined for foreign countries are maintained to meet the high demand for drugs caused by the pandemic.

#### *Identification of competition issues*

Lack of competition in drug pricing in Senegal Senegal has always been concerned about the price of medicines. It is a signatory to the Bamako Initiative (BI), which consists of promoting a public policy on essential medicines for grassroots communities in order to reduce the cost of medicines, especially those of first necessity, some of which were too expensive for the population. At present, Senegal's drug pricing policy is based on **free access to some products** and free administration of others. Here, competition can only occur in the way these products are supplied. These drugs are supported by donors and subsidies from the state. Thus, in the public sector, all drugs derived from ACT malaria drugs are free. Drugs to fight tuberculosis

and AIDS (ARVS), as well as tests and analyses for screening and monitoring, are also free. With the current universal health coverage (CMU), launched in late 2013, up to the age of five, some medicines are free. Under the "Sesame" plan, people in the third age (over 60 years old) receive free medicines that they find locally (health centers and others). The oligopolistic nature of the market. The Senegalese pharmaceutical market is not overly competitive given the very limited number of local industries. Some exits from the market have been noted in recent years with the departure of pharmaceutical companies such as Sanofi in 2017, which sold its shares to Médis, which had enormous financial difficulties in ensuring its production. There was also the departure in 2017 of the Pfizer group. With these companies only, **the market is no longer competitive**. Indeed, these two companies are in a monopoly situation. For better competition, the principle of atomicity of supply must be ensured. The Senegalese pharmaceutical sector is highly regulated. Marketing authorizations (MA) are mandatory. The issuance of the MA by the competent authority is not immediate and can take two years or more. These delays slow down the return on investment and often result in losses for the sponsor. In addition, drugs produced and awaiting approval may not be sold. The marketing of medicines on the Senegalese market is fraught with many competition-related issues. Almost all medicines are sold under prescription. In reality, it is the doctors who determine which product to buy.

**In Togo**, the national pharmaceutical regulatory system is structured around a National Pharmaceutical Regulatory Authority (ANRP), institutionally anchored in the Ministry of Health, which is responsible for the following seven functions

- (1) the approval of pharmaceutical products through the granting of Marketing Authorization (MA);
- (2) the granting of operating licenses to various pharmaceutical establishments;
- (3) market surveillance through import and export control and quality control of health products;
- (4) pharmaceutical inspection;
- (5) pharmacovigilance and
- (6) the management and control of clinical trials;
- and (7) the supervision of the promotion of health

products and the production of reliable medico-pharmaceutical information.

In the pharmaceutical sector, the regulator is not yet in place and this role is devolved to the Directorate of Pharmacies, Medicines and Laboratories (DPLM) which acts in the regulation of the pharmacy.

The pharmaceutical sector in Togo is essentially dependent on imports for pharmaceutical products and this item represents the largest budgetary share outside of salaries for health operations (medicines, vaccines for epidemics, medical consumables, laboratory reagents). The pharmaceutical supply and distribution system was completely disorganized after the bankruptcy of TOGOPHARMA, a state-owned monopoly in the distribution of medicines. The lack of availability and accessibility of medicines has contributed to a gradual deterioration of the entire health sector, despite the fact that a major advantage since the end of 1993 has been the generalization of cost recovery.

Today, the Togolese pharmaceutical sector has undertaken a restructuring that follows the main guidelines developed by the different thematic groups, set up after the devaluation of the CFAF in 1994, during a meeting of the Ministers of Health of the franc zone countries in Abidjan, and supported by the French Cooperation, the European Union and the World Bank,

#### *The National Pharmaceutical Pricing Policy*

The indicative prices of pharmaceutical products are generated during the product authorization process. Marketing authorizations for drugs are issued by the ANRP after studying the file of the candidate drug including its price. According to the CSP, the CNEM should rule on this price before giving an opinion on the granting of the MA; it is therefore essential to be able to make the CNEM functional in order to better negotiate the prices of drugs placed on the Togolese market. In addition, although drug prices in Togo are regulated in the public and private sectors, public health facilities on the periphery do not respect them not systematically. Some regional pharmaceutical warehouses are not under the administrative authority of CAMEG-Togo and apply different prices. It should be noted that the decree establishing the pricing of pharmaceutical

products did not provide for pricing at the regional level because the PRAs did not exist when it was signed, which makes it difficult for the SFs to apply the decree. In the private sector, the drug pricing policy is very favorable, with the lowest distribution margins in the subregion. However, it is imperative to ensure the sustainability of this sector, which provides the bulk of the country's drug supply, through an updated pricing structure that enables it to perform its role under the best conditions. The revision of the pricing policy of pharmaceutical products is therefore necessary.

### *The pharmaceutical market*

In Togo, the pharmaceutical market is composed of two market segments: the non-profit market and the private market. The non-profit pharmaceutical market is represented by CAMEG TOGO, OCDI (a wholesale mutualist for religious health facilities) and by all the pharmacies in public health facilities. The private pharmaceutical market in Togo is made up of drug production units, importers, wholesalers and distributors and pharmaceutical warehouses. In addition, there is good complementarity between the private and public pharmaceutical sectors: all the major orientations concerning the sector are carried out together and a policy of support for the promotion of MEGs in the private sector has been developed, and this has materialized in the form of the possibility for CAMEG to sell MEGs to the private sector, since the beginning of 2001.

### *The market structure of pharmaceutical products*

The supply and distribution of pharmaceutical products are ensured by the public and private sectors: The nonprofit operator market consists of:

- Central Purchasing Office for Essential Generic Drugs of Togo (CAMEG-Togo),
- OCDI Togo, a faith-based wholesale distributor

The strictly private for-profit market is formed around the following structures:

- Two drug production plants: GGIA (national private initiative) and TONGMEI (Chinese factory). Only

TONGMEI produces MEG from the national list; GGIA only produces pharmaceutical specialties;

- Five wholesaler-distributors: UBIPHARM, UNIPHART, TEDIS PHARMA, CPA and SOTOMED
- Drug prices: In Togo, the State has issued a decree to **regulate prices**. Thus, the interministerial decree n° 162/97/MS/MIC/MEF of October 31, 1997 regulates the price of pharmaceutical products. This means that wholesaler-distributors, pharmacists and pharmacy depots are not free to make

fluctuate prices. No matter where in the country, a product has the same price in all pharmacies and warehouses. According to this decree, in its article 3: "The ceiling price of sale to the public of essential generic medicines under INN of the national list of essential medicines is fixed every year by the National Commission of Registration of Medicines. This price is unique for all. That is, it is the same in public and private non-profit health facilities, as well as in profit-making pharmacies and warehouses. The ceiling price for the sale of branded drugs to the public is obtained by applying a coefficient of 1.75 to the FOB purchase price negotiated between the laboratory and the national registration commission, which takes into account the manufacturers' reference prices and the prices obtained on the international markets. This coefficient corresponds on average to a wholesale margin of 13% on the cost price of the product and a 30% retail pharmacist margin on the wholesale price. Thus the wholesale price (WP) = WP x 1.13 (wholesale margin = 13%) and the retail price (RP) = WP x 1.30 (retail margin = 30%)

### *Competition situation in the pharmaceutical sector*

**Operating license for private pharmacy:** The exercise of the profession of pharmacist in Togo is regulated by law. Only pharmacists can obtain this authorization. They must apply to the Directorate of Pharmacy, Medicines and Laboratories. The fees for the study of the file are

communicated to the applicant at this level and the operating license is issued within 5 months. Following this authorization, the pharmacist must apply for an operating license within 12 months, or else the license will lapse. For a pharmacist, the license is 100,000 F CFA valid for 5 years, and for a wholesaler-distributor, it is 500,000 F CFA also valid for 5 years.

**Distortion in the sale price of MEGs:** The sale price of generic drugs (MEGs) in all health facilities (FS) is high compared to the public price set by CAMEG. This public price is the result of the application of the interministerial order on the price structure of MEGs. According to this order, the retailer's profit margin is 60%. The public price is therefore obtained by applying a rate of 1.6 to the wholesale price. The survey conducted as part of a thesis in pharmacy revealed that in 44.68% of SFs, prices are set arbitrarily by a management committee (COGES). The price structure is therefore not respected by the managers of the SFs. The rates applied to the wholesale price of certain products are as high as 2.5 in some SFs, making medicines less accessible to the population.

**Inequalities in pharmaceutical distribution:** Togo is a country strongly affected by the inequality of geographical and sectoral distribution of health professionals. About 150 pharmacists out of 170 work in the capital, Lomé. 92% of pharmacists work in the private sector.

**Weakness of the local pharmaceutical industry:** In Togo, Indians or Chinese occupy

almost all the technical positions in the country's four LPPs while Togolese occupy the position of superintendent. This situation is attributed to three factors: inadequate training at local universities; brain drain; and the terms and conditions of the LOBs. First, the pharmaceutical sector has

need specialized skills in pharmaceutical identification, formulation, production and production testing, which in most cases can only be provided at the postgraduate level. Second, brain drain is another major challenge facing the availability of skilled personnel in the pharmaceutical industry. The estimated loss of return on investment for these West African countries is nearly \$2.17 billion, while the net gain for the developed countries to which they have migrated has been estimated at \$4.55 billion.

**Withdrawal of pharmaceutical products from the market:** According to the news site Atlantic infos, some pharmaceutical products are withdrawn from the Togolese market. This is a decision taken March 2019 by the DPML. By marketing order No. 003/2019/MSHP/CAB/SG/DPML/DMPS/SVPU PS dated March 12 2019, the Ministry of Health and Public Hygiene through the Directorate of Pharmacy, Medicine and Laboratories, has informed pharmacists and the population of the withdrawal of certain pharmaceutical products from the Togolese market.

## 2.3 Transportation sector

The transport sector is also not immune to anticompetitive practices, especially if the structure of the market facilitates collusion and coordination of players. There are some concerns with respect to the structure of the transport sector in the ECOWAS region, mainly in the air and road transportation sectors.

### Air transport

Although the international air transport market has few competition concerns due to the number of regional and global airlines plying the routes, the domestic markets are still characterised by

some dominance. In **Cape Verde**, there is currently only one company (BESTFLY CABO VERDE) which operates in the inter-island passenger air transport sector.

The same pattern also emerges in **Cote D'Ivoire**, where Air Cote d'Ivoire has a 72% share of overall domestic traffic at Abidjan airport. In **Ghana**, the domestic market is a duopoly between the African World Airlines and Passion Air with the former being the market leader in terms of market share. The fact that domestic airfares in Africa are considered too expensive

relative to international ones could also be indicative that the absence of competition in these regions could be the explanation. With regard to air transport in **Guinea**, the country does not have a national airline for a decade to compete in its domestic market. To date, Ahmed Sekou Toure International Airport is served by 14 airlines, most of which are from the sub-region. In this sub-sector, the market is an oligopoly between Air Cote d'Ivoire, Senegal, and Asky Airlines. These companies have a large market share and impose anti-competitive constraints on other companies, including Air Maroc and Ethiopian Airlines. As for the external market in Africa, Air France has a monopoly in the airline sector. Air transport in **Guinea Bissau** is entirely controlled by foreign airlines (TAP, AIR ATLANTIQUE, AIR MAROC, ASKY and AIR SENEGAL) operating internationally because, due to the small size of the country, there are no domestic flights or national companies. The ground handling service is provided by a company private company called NAS (National Airport Service). There are no cargo agency services and there are a variety of ticket agency services. It should be noted that air transport is fully liberalized in Guinea Bissau. Thus, any company that meets the corporate, technical and safety requirements can operate.

In **Guinea (Conakry)**, the study found that freight rates are regulated through self-regulation by the General Transport Union. With regard to **air transport in Guinea**, the country does not have a national airline for a decade to compete in its domestic market. To date, Ahmed Sekou Toure International Airport is served by 14 airlines, most of which are from the sub-region. In this sub-sector, the market is an oligopoly between Air Cote d'Ivoire, Senegal, and Asky Airlines. These companies have a large market share and impose anti-competitive constraints on other companies, including Air Maroc and Ethiopian Airlines. As for the external market in Africa, Air France has a monopoly in the airline sector.

In **Mali**, following reforms in the management of African airspace and the difficulties encountered by Air Afrique, a new company "Air Mali-SA" was created. It has a **de facto monopoly at the national level**. For air transport, it appears that

the fares are out of reach of the population. In addition to these problems, the transport sector suffers from a lack of harmonization of regulations in neighboring countries, and from non-compliance with international agreements and treaties between countries. As far as air transport in **Senegal** is concerned, the Senegalese domestic market is now a duopoly between Senegal Airlines and Trans Air, with the former holding a significant market share. With its position as a national company, Senegal Airlines benefits from significant financial support from the State which gives it a comparative advantage over its competitor. This state promotion of the company is a distortion of competition. Indeed, only Senegal Airlines provides national and international travel for members of the government as part of their business trips.

With regard to air transport in **Togo**, it is important to note that there is no regulator or fare regulator for air transport. There is no air transport observatory to enable users to deal with problems of air fares and distortions in the transport of passengers and freight. Prohibitive taxes in the airline sector: With 40 to 50 percent of the total cost of an airline ticket going to governments in the form of various fees, airlines are used as tax collectors, even though they should be protected to overcome the crisis period they are going through. Currently there are more than 200 different types of taxes, fees and charges in the five regions of Africa (West, East, Central, South and North) including Togo. As a traveler, consumer or passenger, when you travel in Africa, especially in Central and West Africa, 40-50% of the total cost of the airline ticket paid to the airline that carries you is made up of taxes, fees and charges that are passed on to governments. The national airline ASKY dominates the regional transport of passengers. It operates flights to several cities in West and Central Africa and to South Africa, with ETHIOPIAN as its main partner. As for Air France and Brussels Airlines, they reign over the transport of passengers to Europe. In terms of cargo transport, ETHIOPIAN Airlines (Cargo) clearly dominates the market, followed by Air France. It is worth noting the complaint of the State of Senegal against the State of Togo in the ASKY case. The State of Togo had signed a

headquarters agreement guaranteeing the airline ASKY a certain number of privileges and tax advantages deemed contrary to the rules of competition by the State of Senegal, which therefore referred the matter to the WAEMU Commission, by letter No. 001905/MEF/CT/IMO of March 2, 2010, to denounce the headquarters agreement signed between the State of Togo and the airline ASKY, which it considered to be contrary to the community rules of competition. By Decision No. 002/2011/COM/WAEMU of August 29, 2011, the WAEMU Commission declared certain provisions of the headquarters agreement between the airline ASKY and the Government of the Togolese Republic incompatible with Community competition rules. As a result, the Togolese State was obliged to notify the public aid projects provided for in the headquarters agreement. Failure to comply with this obligation made the tax privileges and advantages provided for in the headquarters agreement illegal.

Gambia has concerns regarding competition in air transport. They may also be captured here.

### Road transport

Across all the countries, the road sector is open and has many players subjecting each other to competition. However, in **Gambia**, the General Transport Union (GTU) which is the umbrella body for passenger and freight/ cargo transporters' association self-regulate the sector. In 2018, members of the GTU organised a nationwide sit-down strike when Government refused their proposal to increase fares and tariff for passengers and freight transporters. In 2020 also the union threatened to go on industrial action if Government did not remove the restriction on the number of passengers allowed per vehicle in observance of social distancing. This structure where a platform facilitates competitors to charge uniform fares as well as to coordinate their activities is not ideal for the spirit of competition. In addition, vertical integration in the Gambia road transport sector where clearing agents who are mandated to clear containers at the ports are also vehicle owners giving preference to their own vehicles first before loading any other vehicles, is a concern. In the **Senegalese** road transport of hydrocarbons, two companies, Daniel

Haddad et Fils and Khoury transport control about 90% of the market. This also makes it easier for coordinated behaviour as well as for abusive behaviour to emerge. In **Burkina Faso** the transportation sector, there have been allegations of rate-fixing cartels, or attempts to monopolize are 'frequently' relayed by some competitors. But these mainly concern the **road sector**, which, despite the multiplicity of competing players, remains sufficiently disordered. An example of this would be the setting of freight rates by the Association des Transporteurs du Faso (OTRAF) in 2018 and earlier. Also, in the context of mineral transport contracts, the Groupement des Transporteurs de Minerais du Burkina (GTMB) referred the matter to the CNCC in March 2016 to denounce a contract of exclusivity, monopoly and unfair competition in the aforementioned sector (Case n°001-2016/S/CNCC/P). In **Guinea Bissau**, the road transport market for passengers and goods is open to competition. The private sector is the sole provider of these services. The government, for political reasons, limits itself to regulating road transport services. There is freedom of entry and exit in transport services and there is no allocation of routes. However, the ASTRA Road Transport Association regulates this sector, updating transport tariffs in consultation with the General Directorate of Land Transport. There is therefore no competition in this sector. **Niger** is a **transit and international transport** corridor, but generally speaking, the current transport and transit system does not meet the country's expectations in terms of efficiency (travel time, regularity, safety and cost). To remedy this situation, the Ministry of Transport is implementing a new policy aimed at lowering land transport costs, improving the quality of services and ensuring the safety of people and goods. To date, Niger's transporters are held back by an escort tax payable to the SONILOGA one-stop shop, the existence of which is not justified by any text. Nigerien transporters suffer from high transit duties for vehicles imported from Algeria. These obstacles are related to technical requirements, inspections, and controls that pose problems for transport service providers (mobile customs, multiple unwarranted controls). In addition, Nigerien transporters have a poor understanding of the axle tonnage convention (WAEMU Reg. 14) that is necessary to preserve

the quality of road infrastructure. **In Togo**, the majority of truck owners involved in **freight transport** are mainly Burkinabe, followed by Nigerians, Malians and finally Togolese transporters. The major players in road freight transport are the companies MEGATRAM, TAT Togo, ZIDNABA, ABDOUL TRANS and KANIS TRANSPORT. **Private transporters in Senegal** have grouped together in union and association movements to defend their interests. Among these associations we can mention: The National Cooperative of Freight Transport Companies (CNETM). In 2016, it had received 800 trucks from the state with a view to renewing of the fleet out of a total number of 3000 trucks. The Union Sénégalaise de Entreprises de Transit et de transport Agréés (Senegalese Union of Authorized Transit and Transport Companies) was born from the merger in 2001 of two national unions of authorized customs agents (the National Union of Authorized Customs Agents and Auxiliary Maritime and Air Transport Agents of Senegal (SYNCAT) and the Union of Authorized Transport Entrepreneurs and Forwarding Agents of Senegal (SETTAS)). These associations actually contribute to setting transport prices and can be considered anti-competitive. Moreover, their weight in the sector gives them privileges and room to maneuver. On the other hand, freight forwarding companies that provide customs clearance also offer freight transportation services. Post-clearance clients tend to request the transportation services of the company that performed the clearance, which limits access to this market to transporters that do not offer such clearance services. In addition, the manufacturing companies that supply countries in the subregion have their own fleets of delivery vehicles, which also precludes competition from independent carriers. The free entry into the freight transport market is marked by significant delays in the issuance of licenses. In fact, in practice, obtaining a license can take several weeks or even more than two months. Carriers are very often forced to pay bribes to speed up the procedure. It is also important to note the predominance of the informal sector, which causes real problems of competition. Informal transporters do not pay taxes or social security contributions, while companies in the formal sector bear all these charges and contributions, which is reflected in

their prices, and is clearly unfair competition. The **transport of hydrocarbons in Senegal** is a special case, as there are only a few companies operating in this field. The transport of hydrocarbons to the sub-region in general and Mali in particular is dominated by the company Daniel Haddad et Fils and the company Khoury Transport. The latter provides hydrocarbon transport for very large companies such as Shell, Senelec, Neptune Energy, Puma, Oryx Energies, ICS, Oil Libya, etc. With a fleet of 200 modern vehicles, Khoury Transports S.A is the leader in the field of hydrocarbon transport in Senegal, followed by Daniel Haddad et Fils, which is the second largest hydrocarbon transport company in Senegal. These two companies alone account for 90% of the hydrocarbon transport market in Senegal.

Concerning the transportation sector in **Burkina Faso**, there have been allegations of rate-fixing cartels, or attempts to monopolize are 'frequently' relayed by some competitors. But these mainly concern the road sector, which, despite the multiplicity of competing players, remains sufficiently disordered. An example of this would be the setting of freight rates by the Association des Transporteurs du Faso (OTRAF) in 2018 and earlier.

Also, in the context of **mineral transport contracts, the Groupement des Transporteurs de Minerais du Burkina** (GTMB) referred the matter to the CNCC in March 2016 to denounce a contract of exclusivity, monopoly and unfair competition in the aforementioned sector (Case n°001-2016/S/CNCC/P). At the same time, the CNCC referred itself in December 2016 to the facts of practices of to restrict or distort free competition in the sector of **transport of goods and similar**. **In the air transport** sector, however, there have not yet been any reports of cartel or monopoly practice. This may be due to the complexity of the services in this sector, which requires a more in-depth study in order to better understand the signs of violation.

### Rail services

Rail services in Burkina Faso have enjoyed a strategic monopoly until now. Nevertheless, the concession granted to Bolloré/SITARAIL by the

Burkinabe State through the Société de Gestion du Patrimoine Ferroviaire du Burkina (SOPAFER-B) to operate the railway in Côte d'Ivoire and Burkina is denounced by nationals who see it as favoritism to a multinational that does not invest in the development of the railway.

### Maritime transport

There is generally very limited market structure related concerns in the maritime transport segment. However, in **Cape Verde**, international companies have been assuming a growing

position of dominance in inter-island maritime transport of cargo, which is true both in the sub-sector of logistics services and in maritime transport (dominated by CV INTERILHAS). Regarding the maritime transport in **Guinea Bissau**, there is strong competition between ships and "Consulmar" pirogues in the transport of people and their goods in terms of price and travel time. It should be noted that the company "Consulmar" has a different price scale for nationals and foreigners, on presentation of an identity document required when purchasing a ticket.

## 3. POTENTIAL ANTICOMPETITIVE PRACTICES IN THE ECOWAS REGION

Given the market structure concerns, it is then not surprising that there are a number of possible anticompetitive practices taking place across the three sectors in the region. Anticompetitive practices can generally be classified into three; abuse of dominance/monopoly, anticompetitive agreements and anticompetitive mergers and acquisitions. Abuse of dominance occurs when a firm in a dominant position engages in practices that are aimed at stifling the level of competition in the market. A firm is said to be in a dominant position if it is in a position to control the market outcomes for a particular good or service, usually the ability to influence the price of a particular commodity or service through its individual action. It is not dominance *per se* that is a concern as it may be a result of legal business advantages, but the abuse of such dominance to negatively affect competition in the market is where the concern lies.

Anticompetitive agreements refer to those arrangements between firms that are intended to restrict competition for profit motives. Such agreements generally fall into two categories;

horizontal and vertical. Horizontal agreements are agreements or arrangements entered into by firms who happen to be competitors, i.e among firms in the same line of business. These agreements are also referred to as cartel agreements. Vertical agreements are arrangements between firms enjoying an actual or potential supplier-customer relationship, i.e, agreements involving an upstream firm and a downstream firm.

Anticompetitive mergers take place when firms curtail the level of competition in the market by strategically combining with, or acquiring other firms in related businesses to eliminate competition or to acquire some market power. This can also be vertical mergers if they enjoy an actual or potential supplier customer relationship or horizontal mergers if the firms are competitors.

A look at the country reports in the ECOWAS region does not reveal a lot of concerns with respect to mergers and acquisitions across the three sectors. However, there are some potential indicators that there are some cases warranting the attention of the competition authorities.

### 3.1 Food and Agriculture

#### Anticompetitive agreements

A potential anticompetitive agreement, which is beyond the national competition authorities, is the Fisheries Agreements between **Cabo Verde** and the European Union. It grants access to the archipelago's fishing resources only to those industrial operators with greater operational (and financial) capacities than local operators. Local

operators are excluded from fully participating under the agreement.

In The **Gambia**, MAK Food, the only commercial onions farm, has exclusive dealership agreements with only two agents, Jaafar Trading and Atta Trading, thereby refusing to supply to other wholesalers. These two agents are responsible for the distribution of all MAK food

products, mainly onions and potatoes. This forces other importers who are restricted from importation by a moratorium that was issued against imports to either obtain the products from their competitors or temporarily exit the onions markets.

In **Liberia**, local rice dealers complain of selective sale of rice on the local market by importers, especially K & K Trading Corporation and Fouta Corporation. Instead of serving on ‘first come, first serve basis’, the importers are engaged in the constant habit of serving some preferred dealers first, resulting in other dealers not get some of the rice to retail, presenting viability challenges.

In **Nigeria**, the sugar market structure is also creating allegations of oligopolistic collusion. A ‘sugar war’ broke out in early 2021 when Dangote Sugar and Flour Mills – two of the three players in the sugar market – wrote a petition to the Honourable Minister of Industry, Trade and Investment accusing the third player BUA of using its refinery in the export processing zones as a decoy to import sugar into the country contravention of its import quota under the NSMP. In response to the accusation, BUA alleged that the petition was triggered by BUA’s

refusal to join a price-fixing and market manipulation arrangement masterminded by Dangote Sugar and Flour Mills.

#### ❖ Abuse of dominance

A case of abuse of dominance in the agriculture sector is from **The Gambia** onion market. Jaafar Trading, one of the only two agents that can buy from MAK Food, the only commercial onions farm, is alleged to be selling onions to only the wholesalers and retailers that buy from its company year-round. This gives the company firm control over its customer base in the onions market as wholesalers and retailers fear buying from other sources including imports during periods when the imports are allowed as the firm only wants those that can buy all year around. Another example, again from The Gambia, is in the groundnuts subsector. The National Food Security Processing and Marketing Corporation (NFSPMC) has been turned into a *de facto* regulator and a player at the same time due to the requirement that it has to register all players in the sector. The firm thus has to register its competitors, giving the Cooperation the avenue to set ad-hoc rules to be able to elbow out competition, hence creating an uneven playing field.

### 3.2 Health and Pharmaceuticals

#### ❖ Anticompetitive agreements

In **The Gambia**, vertical restraints exist in the pharmaceutical market. Some of the international companies manufacturing medicines, either register their products / brands directly in the Gambia or register through the local agents. Once these drugs have been registered, the local agents have exclusive rights to import those drugs unless a competitor receives an authorization to import from the manufacturer. Although exclusivity agreements are not necessarily illegal in the Gambia, it creates a barrier to entry for potential entrants. The agreements between multinational pharmaceutical companies and local agents within the Sub-region also restricts cross-border competition between agents in various countries as each agent is restricted to the Geographical boundary of its country.

A similar concern also arises from **Sierra Leone**. Peoples’ Enterprise Company is one of the largest importers of drugs and medical supplies. They import drugs from two major companies,

Mihika Pharmaceutical and Sinochen Nuobai in India. They own certain brand permits from these companies making it impossible for other pharmacies to market it. These rights are authorized and enforced through the Pharmacy Board of Sierra Leone.

In addition, tying arrangements also exist in **The Gambia** pharmaceutical industry. Some of the wholesalers have as a condition of sales that retailers must buy at least three different types of medicines. This implies that a retailer cannot buy only one item from the said wholesalers. This conditions retailers to buy products they do not need given that some the wholesalers are the sole distributors of certain brands.

This is also similar to the situation in **Nigeria**, where the importation/distribution arrangements for drugs are exclusive. The implication is the conferment of market power on the distributors, especially where the drugs are non-generic. The impact of exclusive distributorship arrangements on competition is exacerbated by the fact that parallel importation is practically impossible in

the drug market. The reason is that an importer requires a NAFDAC registration number and import permit to import drugs and the only person who would have these requirements is the authorised exclusive distributor.

### Anticompetitive Mergers and acquisitions

There are also some indications that vertical integration through strategic acquisitions have created some competition concerns in some countries in the pharmaceutical industry. In **The Gambia**, vertical integration in the pharmaceutical sector is more pronounced, with importers owning wholesale outlets, retail pharmacies and drug stores. Given this market structure, importers are competing at the retail level with the retailers on products they supply to them. This creates an opportunity for Retail Price Maintenance and predatory pricing. The potential market power of importers as a result of the control over the value chain may also serve as a barrier to entry especially at the retail level.

In **Ghana**, there have also been a lot of strategic mergers and divestitures which have also created some competition distortions. For example, in 2008, Gokals-Laborex, a Ghanaian wholesaler of Indian origin in a joint venture with Laborex, part

of the French group Eurapharma, procured several local competitors. This brought about an uproar since local wholesalers protested that the aforesaid company unfairly acquired exclusive licenses with the European companies from local manufacturers who had kept these affiliations for years.

In 2017, local pharmaceutical manufacturers complained that foreigners were driving the former from the industry. This was after Pfizer (British pharmaceutical company), GlaxoSmithKline (an Anglo-Swedish multinational pharmaceutical and biopharmaceutical company), AstraZeneca (a French multinational pharmaceutical company), Sanofi S.A., Johnson & Johnson (a leading US pharmaceuticals and healthcare company); and Italian multinational company, Rush Pharma had either terminated their contracts or were in the process of terminating their contracts with Ghanaian-owned pharmaceutical companies so as to deal exclusively with foreign distributors operating in Ghana. As a result, for example, indigenous companies namely Ernest Chemists Limited, Unicom Chemists Limited, Gokals Laborex and Parkenstein Limited, having their distributorship contracts terminated by GlaxoSmithKline.

## 3.3 Transportation sector

### Anticompetitive agreements

Allegations of anticompetitive agreements in the transport sector are mainly facilitated by transport unions. In **Burkina Faso**, the fixing of freight rates by the Association des Transporteurs du Faso (OTRAF) is common. In **Nigeria**, as a way of protecting their trade, the unions/associations harass and extort non-members or even private vehicle owners who attempt to pick up passengers for free. The unions impound the vehicles of non-members operating commercial transport services and force their owners to register with the union and pay penalties. This harassment and extortion are extended to app-based taxi operators such as Uber and Bolt who they claim to have stolen their customers. The unions also fix fares, especially for long-distance trips originating from and around motor parks controlled by them. To eliminate competition from non-members, the unions go as far as intimidating corporate operators who try to establish a motor park or

branch office close to the parks controlled by the unions.

The **Senegalese** transport companies are also organized in the form of an association in order to put themselves in a dominant position. These associations reach a consensus on the determination of tariffs. In addition, they use their strength of unity to influence the price of transport.

Vertical restraints also take place in **Nigeria** between freight forwarding and trucking service. Customs agents who are mandated to clear containers at the ports are also vehicle owners. These customs agents give preference to trucks owned by or affiliated with them, which forecloses the market for drivers and truck-owners that are not affiliated with any customs agents.

This is also similar with the case in **Senegal**. The forwarding companies that perform customs clearance procedures also provide transportation services for the goods. Post-clearance customers tend to seek the transportation services of the company that performed the clearance. Therefore, companies that are only in the transportation business may have limitations in accessing this customer base. This is because freight forwarders prefer to use their own trucks before using other carriers if necessary. In addition, the production companies that supply the countries of the subregion have their own fleets of delivery vehicles. This availability of trucks excludes them from competition in the transport of goods.

Similarly, in the transport sector in **Togo**, operators are organized in the form of carrier associations or carrier unions. There are agreements between the carriers' organizations and the owners of the freight on the price.

The air transport industry in **Nigeria** is also not spared. The coordination of air fare increases under the Airline Operators of Nigeria is already under investigations by the competition authority. In addition, there is an alleged cartel conduct of suppliers of aviation fuel, which is also under investigations by the competition authority.

## 4. POLICY AND REGULATORY BARRIERS INTO THE THREE SECTORS

Government intervenes in the economy to safeguard against market failure. When left on their own, markets can produce undesirable outcomes which can end up having negative impact on consumer welfare. As a result, government regulations, such as licensing, price controls, limiting the market participants or imposing substantial regulatory approval costs end up being introduced. However, although introduced in good faith, some of these regulations end up creating monopolies which in turn tend to abuse their positions thereby

worsening consumer welfare. This means that there is still room for ERCA, through its advocacy role, to monitor some of the existing policy landscape in the ECOWAS region with a view to ensuring that a balance is struck on the need to protect consumers from the adverse effects of market failures on one hand and the need to protect them from exploitation from those that take advantage of the landscape created by the policies to gain dominant positions. There are a number of examples where such relook is needed across the three sectors in a number of countries.

### 4.1 Food and Agriculture sector

A possible example of a possible policy created competition distortion is from **Benin**, where the Interprofessional Cotton Association (AIC) was created in 1999. The AIC is the framework for consultation among the actors in the cotton sector in Benin. It brings together the professional families of cotton producers, importers and distributors of inputs and ginners. It is within this framework that input and seed cotton prices are negotiated. Whilst the different segments of the cotton value chain are represented, there is always a possibility that a platform where the prices of a commodity are determined through negotiations rather than competition traits can produce sub-optimal outcomes.

Monopolies that are created through policies also tend to give advantages which can be easily abused. In **Liberia**, against the backdrop of declining rubber prices and low production of

rubber, the Government of Liberia in 2019, amended the 2008 Concession Agreement it had with Firestone. Among other things, under the amended agreement, the Government of Liberia has granted Firestone Liberia the exclusive right, permit and license to engage in the production area (subject to other terms in Liberia) and utilization in Liberia of rubber and rubber products and the exportation of rubber product from Liberia. The terms and conditions of this agreement gives Firestone monopoly over the rubber industry in Liberia and this has had some severe impacts on smallholder farmers. In February 2020, the company suspended the purchase of rubber from local farmers, promising to resume purchase in April, 2020. The company later failed to resume the purchase of rubber in April as it promised leading to severe economic hardships for many farmers who depend on rubber production as a means of livelihood. Even

worse was the fact that farmers could not sell their raw materials in the country until Firestone was ready to purchase them at the company's own price.

Price controls also tend to have some undesirable competition effects, even though they are meant to cushion consumers. In **Liberia**, rice is among the products that Government intervenes on prices (together with cement and petroleum products). The Government of Liberia through the Ministry of Commerce and Industry, provides price ceilings through its regularly issued Price Circulars. However, this practice tends to cause viability challenges in terms of shocks when the policy adjustment response is not fast enough. Some rice importers and retailers failed to get the necessary response from Government when surging import costs associated with geopolitical crises between Russia and Ukraine set in. When the suppliers held on to their produce due to unviable prices, the Liberian Government issued a stern worded statement to those hoarding rice and those selling to consumers beyond the Government price to desist or their business be shut down and fines imposed. Importers affected by rising international prices, increment in international freight cost and the rapid increase in

fees for services at the National Port Authority could not get quick solution.

Price controls for onions in **Senegal** also tend to have a similar impact. Since 2003, in its mission to regulate the market for agricultural products, the Market Regulation Agency (ARM) has put in place a price ceiling to control price levels, which has eliminated price competition. The pricing mechanisms is also blind to quality considerations; whatever the quality of the onion, the price per kilogram is fixed upstream. The effect has been to discourage farmers from investing in quality above the required minimum quality standard. The price controls have thus removed farmers' incentives to invest in productivity-enhancing practices.

To protect local players as well as to regulate product availability in the market, governments also use import control measures. However, at times such control measures can have some undesirable competition effects. In **Nigeria**, import restriction/prohibition on rice is in place. The prices of both the locally produced and the smuggled foreign rice have consistently risen over the past seven years, exposing many poor households to hunger, at a time when imports could have lessened the burden.

## 4.2 Health and Pharmaceuticals

The major policy issue with respect to the pharmaceutical sector is the limited number of local manufacturers, which has seen too much reliance on imports. The reduced number of players is mainly attributed to some licensing requirements, which are too prohibitive. For example, **Burkina Faso** and **Sierra Leone** have no local pharmaceutical production hence reliance on imports. As a result, price controls for pharmaceutical products is quite common in some countries, as there is no organised structure that can help discover prices. For example, price controls for pharmaceutical products is religiously enforced in **Burkina Faso, Cote D'Ivoire and Togo**.

The impact of regulation in preventing entry into the pharmaceutical and drug industry is more pronounced in some countries. In **Ghana**, there are delays and high cost involved in registering products and acquiring certification. The high cost of registering a product emanates from the high registration fee coupled with the overlapping

legislation and fragmented institutions. This affects the ability of new entrants to enter into the market to compete with the existing firms.

In **Liberia**, the process for registration of products with the Liberia Medicines and Health Products Regulatory Authority (LMHRA) is very cumbersome. It takes between six months (the minimum time or fast track procedure) to two years (the regular time) for a product to be registered with the LMHRA. And as part of the registration process, importers need to ensure the renewal of their registration permits which takes place every three years.

The unduly lengthy and expensive approval process for drug imports also serves as a barrier to entry in **Nigeria**. Importers often complain about the lengthy and not-so-transparent process of obtaining approval for drug imports from National Food and Drugs Administration and Control (NAFDAC). Officially, it costs USD1100 in fees and 120 days to register a drug. The process also involves NAFDAC officials visiting

the factory in the country of origin for inspection for which the applicant is required to pay USD10,500. The fee for a foreign inspection is usually waived if the manufacturing facility has a valid Good Manufacturing Practice certificate. In practice, the process could take up to 12 months and cost much more as many companies resort to the use of consultants to beat the complex procedure.

There are also other potential competition distortion policies in some ECOWAS countries. In **Gambia**, Section 36(2) of the Medicines Control Agency (MCA) Act 2014 prohibits parallel importation. This provision restricts importers from sourcing the products from other agents in the sub-region or other countries even though their prices could be cheaper compared to those of the local agent. Tobinco Pharmaceutical have been stopped by MCA from importing certain drugs from Ghana due to their competitors (Malak Chemist) having exclusive rights to

import them using provision of section 36(2) of the MCA Act 2014.

In **Ghana**, in order to encourage domestic production, government has restricted the importation of some 49 pharmaceutical products, with local manufacturers given a system of marginal preference, based on a 15% discount incentive. Additionally, domestic manufacturers have the benefit of not paying tax on some imported raw pharmaceutical materials so as to make them more competitive. While the purpose of this restriction is to encourage local production with the ultimate goal of providing accessible and affordable medicine for consumers, ECOWAS market as member states producing similar restricted drugs cannot export and compete on the Ghanaian market. Moreover, firms producing such restricted drugs may take undue advantage of the situation to exploit consumers especially when there is no general competition policy and law in Ghana.

### 4.3 Transportation Sector

Given that the transport sector has generally a lot of uncoordinated small scale and individual players, it is generally not expected that there could be some policy barriers preventing entry. However, policies restricting entry can be found in Cape Verde.

In **Cape Verde** maritime transport, the Basic Law on Concessions for the maritime transport service of passengers and cargo between the islands, combined with the existing concession contract signed between the State of Cabo Verde and the company CV INTERILHAS (following a public tender launched for this purpose in 2018), limits the entry of new operators in the sector. As of 2019, a new system came into effect, in which the

State granted the exclusive concession for the public service of maritime transport of cargo and passengers to one company - CV INTERILHAS (CVI) (following an international public tender). This implies that the firm obtained state assisted dominance.

In **Sierra Leone**, Sky Handling Partner is the only ground operation company at the Freetown International Airport. This is mainly due to the fact that the size of the airport was deemed too small to allow for more players. Thus, the regulatory position is that there should be only one play, which might not necessarily create the incentives for efficiency on the part of the selected player.

## 5. CONCLUSION: IMPLIED DOMESTIC AND REGIONAL COMPETITION ADVOCACY AGENDA

Given that ERCA's mandate includes assisting ECOWAS governments in assessing constraints that impede the development of competitive market structures in key strategic sectors, as well as providing support in the design of legal and institutional frameworks for effective

### 1. Monitoring and addressing highly concentrated market structures

Existing evidence point at highly concentrated market structures across several countries in all

competition policy, there are several implied advocacy issues from the findings. There is thus need for close cooperation between national competition authorities (where they exist) and ERCA in pursuit of the following:

the three sectors which were the focus of analysis. It is worrisome that food and pharmaceutical

products, which are generally price inelastic, are also being produced under conditions of highly concentrated market structures. Highly concentrated market structures imply that it is possible for dominant forms to abuse their dominance, while also making it easier for the firms to coordinate their behaviour to enhance rents in an anticompetitive manner.

## **2. Removing policy induced barriers**

Government always intervenes in the market to address market failure by introducing regulations which are intended to safeguard the interest of the consumer (consumer welfare). However, the noble objectives can end up being counterproductive when they impose restrictions on entry and result in consumers being subjected to competition conditions which are less favourable for their welfare.

There is evidence that this has happened in the countries across all the three sectors. This includes price controls which threaten the viability of domestic firms and result in smuggling and informalisation, as well as restrictions on entry and the number of players that can operate in a market, resulting in market concentration.

## **3. Addressing structural issues affecting competition**

The market behaviour might have evolved over the years such that some anticompetitive behaviour has become normalised in the economy. Advocacy should also seek to sensitise the perpetrators so that they also appreciate the need for behaviour change. This is more pronounced in the transport sector across the

## **4. Eliminating anticompetitive practices**

The presence of anticompetitive practices even in countries with competition regulatory institutions is worrisome. This requires advocacy initiatives aimed at capacitating enforcement authorities to adequately handle the practices. This includes both capacitating through knowledge impartation as well as ensuring that the legislative environment adequately empowers them to take action against any violation of competition laws.

In countries where competition authorities are not yet in place, advocacy should be concerned with

Advocacy initiatives should be on how the national governments can facilitate entry into the markets where players are few, or on how entry barriers and other advantages which make the incumbents difficult to compete against are removed. Levelling the playing field should also be at the top of the agenda to ensure that any dominance is not arising from behavioural induced barriers but is a natural process from production and distribution efficiencies.

Advocacy initiatives should be primarily centred on how to ensure more efficiency in regulations so that there are minimum distortions from their enforcements. This includes ensuring that the price adjustment mechanisms are quick enough to avoid becoming a burden to the players. In addition, advocacy should also aim at ensuring that there is a mechanism for constant review of distorting regulations so that there is a balance between the need to protect consumers through interventions and avoiding competition distortions. Research informed advocacy should also seek to ensure that there is total elimination or substitution of all competition distorting regulations that have outlived their usefulness.

countries where associations have positioned themselves as a centre for cartelised behaviour as well as *de-facto* regulators who are not necessarily inclined towards competition norms. Only properly targeted advocacy programmes can result in desired outcomes without causing further conflicts and resistance.

ensuring that there is consensus among all stakeholders on the need for introducing the competition laws and regulations as well as the policy and institutional framework. There is still lack of consensus on the benefits of competition in countries that are yet to enact competition laws.

## **5. Creation of a competition culture among regulators**

The fact that structural and regulatory loopholes also facilitate anticompetitive outcomes shows that there is still need for harmony among all the power holders and brokers. The enforcement of regulations need not result in anticompetitive outcomes if all the regulators are bound by the same principles on fair competition. Thus, advocacy initiatives should also be aimed at

building a competition culture among all the ECOWAS countries to ensure that the need for amendments and alignment does not result in strong opposition informed by the need to protect the status quo. Capacity building and training at regulatory levels on competition and its enforcement are thus critical.