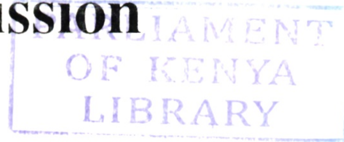
Monopolies And Prices Commission



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The Treasury
P.O. 30007
NAIROBI, KENYA

Telephone: 338111
Ext. 33257

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COMMISSIONER'S STATEMENT

The year 1999 proved to be as demanding as the previous year to the Monopolies and Prices Commission. We had a heavy workload, much of it related to the handling of merger and take-over applications, resolving complaints on Restrictive Trade Practices and sensitizing the community on the goals and benefits of Competition Policy and Law.

Competition may be defined as the striving or potential striving of two or more persons or organizations against one another for the same or related objects. Competition Policy therefore encompasses all policies dealing with the extent and nature of competition in a state or community. The policy permeates a large body of legislation and government or community action that influence permissibe competitive

behavior by firms, the capacity of firms to contest particular economic activities and the differences in the regulatory regimes faced by firms competing in one market.

Competition Policy in general therefore strives to preserve and promote the competitive functioning of the market mechanisms. Perfect competition as defined by the standard neoclassical economics has long been hailed as the ideal type of market structure in that it maximizes social welfare. In the real second-best world, however, effective or workable competition is accepted as a feasible goal of competition policy. Therefore, the philosophical foundation of competition policy lies in the trust in the performance of market mechanisms. Despite their inherent failures and imperfections, market mechanisms are claimed to be the best means of efficient resource

allocation that human beings have experimented with. The World Trade Organisation (WTO) Agreement is an attempt by the international community to practice Competition Policy across national borders on consensually agreed competition conduct rules. International Cooperation among national competition authorities is essential and concerted effort towards consensus will contribute to the consolidation and strengthening of this dominant economic regulation framework.

Recent economic research in economies which have implemented Competition policy for fifty or more years has found some aspects of competition particularly important:

Striving or potential striving: It was once thought that the markets would be efficient only when a number of firms were actually

competing. Recent work suggests that the real likelihood of competition occurring (potential striving) can have a similar effect on the performance of a firm as actual striving. Thus a market which is highly open to potential rivals - known as a highly "contestable" market - may be of similar efficiency as a market with actual head - to - head competition.

Two or more persons or entities: Early economic work suggested that large numbers of competitors were important for the effective working of competitive process. However, it has now been established that in some cases,

competition between a few large firms may provide more economic benefits than competition between a large number of small firms. This may occur due to economies of scale and scope, not only in production but also in marketing, technology and management.

Against one another: while the simplest notion of competition sees firms providing identical products or services and competing largely on price, work in business strategy suggests that this is the exception rather than the rule. In practice, competition occurs through firms seeking to provide different mixes of benefits to consumers, some of which are

already reflected in price and others of which are reflected in other elements of value to the consumer such as service, quality or timeliness of delivery.

Related objects: Competition need not be between identical products or services. Economics has long recognized competition between substitutes. It is the striving to meet the same customer need that is the essence of competition and this is reflected in the ways in which this is met by different market participants.

The backbone of competition policy is the Competition Law. Nevertheless, in view of the multi-faceted nature of Competition Policy, the necessary legal devices cannot be fully provided

by a single law, however strong it may be. At the same time, Competition Law itself cannot be confined to a legal manifestation of narrowly contoured Competition Policy. This is all the more so in developing and transitional economies. Competition Law therefore comprises various laws which deal with the myriad issues of information asymmetry, disproportionate bargaining power, concentration of economic power, cross border trade, mega-mergers, government action and so on. For instance, in addition to usual provisions on unfair (Restrictive) business practices, mergers, acquisitions, concerted activities (Collusion) and resale price maintenance, competition policy and law have concerns in joint ventures, consumer welfare, development of disadvantaged regions, small business development, fair-sub-contracting between giant

firms and Small and Micro Enterprises, unconscionable conduct, privatization and demonopolisation of public utilities, etc.

It must be borne in mind that anti-competitive government interventions cannot be eliminated with one stroke. It is a task that has to be implemented on a continuous basis until fair and free competition is firmly established in the market. Competition agencies world over try to ensure that statutory restrictions to fair and free competition are removed from existing and new legislations.

The relationship between competition and community welfare can be considered in terms of the impact of competition on economic efficiency and other social goals.

Efficiency is a fundamental objective of competition policy because of the role it plays in enhancing community welfare. There are

three components of Economic efficiency:

Technical or productive efficiency which is achieved where individual firms produce the goods and services that they offer to consumers at least cost. Competition can enhance technical efficiency by stimulating improvements in managerial performance, work practices, and the use of material inputs.

Allocative efficiency is achieved where resources used to produce a set of goods or services are allocated to their highest valued uses (i.e, those which provide the greatest benefits relative to costs). Competition tends to increase allocative efficiency because firms

that can use particular resources more productively can afford to bid those resources away from firms which can-not achieve the same level of returns.

Dynamic efficiency reflects the need for industries to make timely changes to technology and products in response to changes in customer tastes and in productive opportunities. Competition in markets for goods and services provides incentives to undertake research and development, effect innovation in product design, reform management structures and strategies and create new products and production processes.

Economic efficiency plays a vital role in

enhancing community welfare because it increases the productive base of the economy, providing higher returns to producers in aggregate, and higher real wages. It also helps ensure that consumers are offered over time, new and better products and existing products at a lower cost. Because it spurs innovation and invention, Competition helps create new jobs and new industries. The impact of increased competition on efficiency in the East African Community (EAC) is illustrated by the recent liberalization of the telecommunications market in the three partner states which has resulted in consumers being provided with a wider choice of services at lower cost.

Increased economic efficiency also means that firms are better able to adjust to changes, including unforeseen changes. This makes the economy more resilient and robust, and better

able to adjust, to changes in the global economic conditions.

The promotion of effective competition and the protection of the competition process are generally consistent with maximizing economic efficiency. However, there are some situations where unfettered competition is not consistent with economic efficiency. In situations where participants in a market have imperfect information about products, producers or suppliers and in situations of natural monopolies, unrestricted competition may lead to "market failure".

J.J.B.Kijirah
COMMISSIONER
Monopolies and Prices Commission

Chapter One

MACRO - ECONOMIC ENVIRONMENT

For the last three years, the growth of the Kenyan economy has been on a downward trend - the real GDP growth falling from 2.3 per cent in 1997 to 1.8 per cent in 1998 and further to 1.4 per cent in 1999. The Government expenditure in 1999, slowed down on account of tight fiscal policies pursued ,during the year.

The country's fiscal deficit widened due to higher expenses in the rehabilitation of infrastructure and the net total domestic borrowing rose to stand at Kshs.23.14 billion. The annual average rate of inflation was estimated at 3.5 per cent, the lowest in the last four years.

The overall balance of payments deteriorated further mainly due to decreasing capital inflows and increasing official capital

outflows. The Kenya shilling depreciated against all the major international currencies. This poor state of the Kenyan Economy may fairly be the economic explanation behind the increased merger and take - over activities throughout the year 1999.

Chapter Two

THE NEED FOR THE REFORM OF THE RESTRICTIVE TRADE PRACTICES, MONOPOLIES AND PRICE CONTROL ACT.

The existing Law and institutional framework of the Monopolies and Prices Commission (MPC) were designed in 1988 as transitional instruments to facilitate smooth and orderly transition from a controlled economy to a free market economy. The law does not apply to all firms nationally and the organizational structure of Monopolies and

prices Commission (MPC) as a department of Treasury denies the office the essential autonomy necessary for effective enforcement of Competition Policy and Law. Competition Law prescribes the basic rules of business conduct in a market economy and thereby constituting the foundation of the country's economic system of regulating business activities including conflict of interests. This calls for neutrality, fairness and expert judgement of experienced persons with skills in Economics and law.

Competition Policy therefore prescribes the basic rules of the game in the market. Nevertheless, if the outcome of the game (Competition) is to be accepted by the society at large, the process of competition itself must not only be free but also conform to a social norm, that is, it must be fair. Fair Competition must go in tandem with free competition.

The notion of fairness rests, inter alia, on equitable opportunities, impartial application of competition rules and redemption of past undue losses. In short, fairness categorically denies the law of the jungle and should lead to envy-free outcomes. Fairness, then, does not imply absolute libertarianism but instead takes the form of socially redefined freedoms. This may be the reason why competition policies and laws of several countries such as South Korea, Japan, Taiwan, Australia, United Kingdom, etc, specify fair and free Competition as their own objective.

The concept of fairness in the context of competition policy in Kenya necessarily must stress the morality of all economic agents in that they must abide by the rules set by the country's competition law. Fairness implies that all economic agents comply with the same rules of

the game. Hence, fairness is a norm not merely for the market but also for the government. In this respect, Competition Policy and Law should be regarded as the Economic Constitution of the country which is in harmony with the National Constitution.

When all participants in Kenya act in accordance with the same rules, social integration will also emerge as a natural consequence. This aspect is all the more important in developing or transitional economies where the rules of the game have to be rehashed to befit the rapidly changing economic conditions. In Kenya, where economic power is not fairly distributed, competition policy must play the dual role of raising the power, within reasonable bounds, of economic agents to become viable participants in the process of competition on the one hand,

and of establishing the rules of fair and free competition on the other. If these two objectives are not met, unfettered competition will simply help a handful of privileged big firms to monopolize the market. This will then give rise to public dissatisfaction since the game itself has not been played in a socially acceptable, fair manner.

Competition offers the promise of lower prices and improved choice for consumers and greater efficiency, higher economic growth and increased employment opportunities for the people of Kenya as whole. Although the notion of competition differs in different countries depending on social and cultural traditions and the economic conditions, its key role as the dominant economic regulation framework has been recognized both in the Developed and Developing Economies. By the end of 1999,

more than eighty (80) member states of the World Trade Organisation (WTO) had adopted competition policy or were in the process of doing so.

For Kenya to prosper, improve the living standards of its people, it will have to adopt policies that will increase the productivity and international competitiveness of its people, firms and institutions. All commercial and regulatory organizations, irrespective of their size, location or ownership, must become more efficient, more innovative and flexible in order to be able to meet the challenges of the globalization of national economy. Competition Policy will provide the spurs for business to improve their performance, develop new products and efficiently respond to changing circumstances in the global economy.

The establishment of a strong, effective and

autonomous institutional framework for implementing Competition Policy, is critical to the country's economic success and ultimately to the efficient operation of the market. It is therefore necessary to review the existing law so as to provide an institutional arrangement which can effectively assist in the coordination of the market reform process through the provision of independent and expert policy advice on issues arising from trade liberalization and the globalization of the national economy.

The key functions of the competition policy institution include:-

- Scrutinize existing laws and regulations which restrict market access and the coordination of reviews of regulatory restrictions in the existing sectoral laws.
- Undertake reviews of structural

reform policies associated with the enhancement of the competitive process in all sectors of the economy.

- Enforce and monitor compliance with competition conduct rules.
- Provide public education on conduct rules and the role of competition in the country.
- As an independent and professional agency, operating through open processes (allowing all parties access), take a continuous and integrated economy - wide view of competition policy matters and regularly provide pragmatic business friendly advice to the policy makers.

- Collaborate with the sectoral regulators to safeguard the efficient operation of the market.
- Coordinate and cultivate cordial relationships with other regional and international Competition agencies.
- Administer any other law which may be delegated to the institution.

All trade activities of both private and public organizations which hinder the free movement of goods and services in the country should be declared null and void as they are incompatible with competition rules of the Market. These activities include among others:-

- Anti-competitive agreements which restrict firms from competing. These include

"Horizontal" agreements between competing firms at the same level of either production or marketing chain (e.g. wholesalers agreeing not to charge below a specified price) and "Vertical" agreements between firms at different levels of production or marketing chain such as between wholesalers and retailers.

- Price agreements between competitors to fix, control and maintain agreed prices.
- Non-price vertical agreements such as market sharing, restrictions to production or supplies, third -line forcing, etc.
- Boycotts which are agreements between competitors aimed at

restricting the ability of a target firm to either buy or sell in a market.

- Refusal to supply and the application of dissimilar trading conditions to equivalent transactions, thereby injuring the competitiveness of some market operators.

Compliance with the competitive conduct rules is encouraged by the provision of an effective enforcement regime. Basically, the objectives of such a regime is to deter people from contravening the law and to compensate injured parties. A system of remedies in appropriate circumstances should be able to attract pecuniary penalties, injunctions, divesture, damages, declarations, undertakings and other compensatory orders. To provide

suitable deterrence, penalties should be set at levels which reflect the significant profits that might be gained from anti- competitive conduct, costs to society of that conduct and the probability of detection. Also, a person who suffers loss or damage as a result of a contravention of the Common Competition Policy should be able to recover the amount of loss or damage from any person involved in the contravention. Equally, both private and public enforcement should be permitted to enhance compliance and minimize costs. The existing Law lacks or inadequately provides for the objects and hence the need for its reform.

Chapter Three

CORPORATE ORGANISATION AND MANAGEMENT

The Monopolies and Prices Commission had a structure of five divisions in 1999. The

Divisions, Divisional Heads and an overview of divisional responsibilities are summarized in table I. In addition the Commission has two specialized Committees to streamline decision making processes-namely; Training Committee and Enforcement Committee.

Table I. Divisions, Divisional Heads and Divisional functions

	Division	Head/Designation	Functions
1.	Administration	Mr.D.J.Mwasaga Deputy Secretary	Finance and General Administration.
2.	Planning and Evaluation	Mrs. E.G.Gachuiri Principal Economist	Merger Analysis and International Cooperation.
3.	Restrictive Trade Practices	Mr. P.O.Ligulu Senior Economist	Anti-Competitive practices and conduct.
4.	Legal	Mr. F.W.Kariuki MPO I	Harmonization of Competition Law with sectoral laws and Coordination with A.G.'s Chambers.
5.	Computing and records	Mr. G.Ciira Statistical Officer I	Library services and computing.

During 1999, the Commission handled thirty two (32) cases as compared with twenty three (23) cases in 1998. The cases were made up of twenty four (24) merger/acquisition cases (13 in 1998) and eight (8) Restrictive Trade Practices cases (10 in 1998). The substantial increase in merger/acquisition cases was a consequence of the poor state of the economy throughout 1999 which forced firms to combine resources in order to improve their survival rate and the requirement by the Central Bank of Kenya (CBK) for banks and financial institutions to increase their minimum capital base to Ksh.200 million and Ksh.150 million respectively by end of December 1999 and thereafter to Ksh.500 million and Ksh.375 million respectively by end of year 2002. Increased awareness of the legal provisions of Cap.504 on the part of the business community may also

have contributed to the substantial cases submitted to Monopolies and Prices Commission (MPC) in 1999.

Competition Policy Agency should be manned by high calibre and independent Competition Economists and Lawyers so as to safeguard the quality of its investigations, enforcement and compliance standards. To attract and retain "top-notch" professionals in these two fields and minimize unorthodox practices, the agency should have the financial ability to offer commensurate remuneration packages and training opportunities to its staff and also offer an enabling work environment. Kenya's Competition Policy Agency is a department of the Ministry of Finance and Planning.

Chapter Four

THE ROLE OF SECTORAL REGULATIONS IN THE DEVELOPMENT OF EFFICIENT AND COMPETITIVE MARKETS IN KENYA

Regulation is a tool used by States to enhance growth and the welfare of the community. Regulations serve as means of combating market failures and they are justified on the various grounds such as macro economic stability, state security and the provision of public goods and services. Market failure may arise where competitive market solutions do not exist such as in the case of natural monopolies and also where market solutions are inefficient because of externalities and information asymmetry. Regulation is thus used to correct and maintain competitive market structures and efficient enterprises.

Competition can remedy or prevent uncompetitive corporate structures, monopolistic price setting and collusive behavior in the market place. However, in some cases, Government responds to market failure with regulation which encompasses both structural and conduct rules which may be applied through a variety of regulatory instruments. Price or profit regulation may be required to remedy a particula: market failure or if the market failure results from a natural monopoly, public ownership may be resorted to. For instance well designed regulation of utilities, promotes competitive utility management and allows for consumer representation, while at the same time, providing investors with the confidence that large capital investments will yield reasonable returns and that tariffs will be transparently set and or adjusted. In any

liberalized sector, where competition is absent, regulators must determine costs of producing or providing a service and sustainability (genuineness) of its price. To introduce competition in such situations, regulators must have to use "auction" practices to promote price efficiency and value. The Monopolies and Prices Commission needs strengthening in view of the demands placed on it by the liberalization process which can easily be derailed by the conduct of firms if stringent measures are not taken to prevent restrictive trade practices or injurious mergers/takeovers.

Competition policy is crucial where publicly owned enterprises is operating in a competitive product market; where product market competition is possible, but not yet achieved; and where there is no possibility of competition in the product market. Competition law should

be made to apply fully to sectors which are competitive or potentially competitive, once direct regulation has been abandoned. Competition then should takeover the role of regulation to ensure that anti-competitive structures and behavior do not emerge to inhibit the operation of market forces. In sectors such as airlines, competition policy should focus on preventing mergers and acquisitions which restrict competition in particular markets, or doing away with commercial arrangements between airlines which restrict entry, capacity and fares as well as counteracting exclusionary behavior such as denial to computer reservation systems.

While competition legislation is macro in nature, there are sectoral laws which control the functioning of particular sectors/industry of the economy. Thus, even in the era of

liberalization, sectoral regulators have a role to play in enhancing market efficiency. Marketing boards are particularly important in cash-crop export sector where benefits from single desk selling accrue due to the consolidation of market power as a nation. There are regulatory authorities in other areas such as stock markets, electricity and telecommunications.

Not all market failures may be overcome by structural reform or by reforms of competition laws and the way they are enforced. Some regulatory intervention may remain essential to protect consumer welfare and at the same time, seek to encourage market forces wherever possible, thereby justifying harmonization of the enforcement of all regulatory framework in the country. In this regard there is a strong and urgent need for a closer working relationship between these sector regulatory bodies and the

Monopolies and Prices Commission in order to discuss and come up with harmonization strategies for these legislation. Further, after the laws have been harmonized, it is necessary for the Commission to be in constant liaison with these regulators to safeguard down and up stream benefits in the market Place.

Chapter Five

PRIVATIZATION AND COMPETITION POLICY

In recent years, privatization has occupied policy analysts in the search for solutions to improve the performance of state owned enterprises (SOEs). Several countries have embarked upon extensive privatization programs within the framework of macro-economic reforms and liberalization, revising the earlier strategy of using public enterprises as the engine

of economic development.

Several reasons have been offered in support of this option such as managerial incentives, enterprise efficiency anc reduction of government's deficits. From the balance sheet perspective, it is a mechanism whereby governments liquidate productive assets, in order to reduce public debt or to finance current expenditure. Such a policy becomes especially attractive when authorities face an unexpected situation which renders them in a poor net expenditure position.

Generally, price liberalization, opening trade (including exchange rate convertibility), simulation of foreign direct investment and privatization taken together are entirely intended to change managerial incentives. It is expected that such measures would result in supply response at industry level, which would alter the

structure of national production, the pattern of sales (both domestically and internationally), the quality and variety of output, enterprise productivity and performance of state owned firms.

It is noted that privatization has introduced some competition in sectors that were previously controlled as state monopolies. It is a challenge to ensure that the privatized firms operate in a competitive environment as opposed to transferring state monopoly to private monopoly. It is the function of the regulatory framework to provide a "level playing field", i.e. facilitate an equitable and fair basis for the efficient functioning of both private and public sector enterprises under competitive and freely market based conditions, and to provide protection to consumers when necessary.

One advantage of privatization is that it

creates more opportunities for competition as it increases the information that the regulator and the consumer have about the firm by allowing both to benchmark the firm's performance. The threat of entry also pressures the firm to improve performance or restrain price increases. While infrastructure firms which have monopoly characteristics have limited scope of competition, in many network utilities this is rapidly changing, most notably telecommunications, but also in electricity. Another area that has also seen growth in competition is mass communication, both TV and radio.

By structuring the market to foster contestability, Competition Policy pits rivals against one another and motivates them to act as watchdogs on their competitors. Even in sectors such as water, with little feasible

prospect for market competition, privatization makes it possible to introduce contestability through auctions or leases. When infrastructure bottlenecks in sectors such as telecommunications or electricity are a drag on new investment and growth, the community/society may be better served by policies that expand business access and drive down prices, than by subsidized services.

It is therefore, a challenge to the Monopolies and Prices Commission to provide a level playing ground to all enterprises, both public and private to compete as privatization will dominate corporatisation if it increases competition, motivates owners to invest or maximize profits and uses reputation to enforce contracts. Healthy competition provides owners with information on costs and managerial efforts, thereby enabling them to design better

incentive systems.

Chapter Six

TREATMENT OF SMALL AND MICRO ENTERPRISES (SMEs)

"Micro-enterprises" are those enterprises with 10 or fewer workers, while "small enterprises" have from 11 to 50 workers. The sector is characterized by semi-organized and unregulated small scale activities largely undertaken by self employed persons or such person assisted by a few employees. Their activities are carried out at a variety of work sites such as temporary structures, open and closed markets, developed business premises, underdeveloped plots, residential premises or street pavements and backyards.

The main legal feature of the sector is that its businesses are neither registered with the

Registrar of Companies nor are they in most cases recorded in official or tax records. Further, majority of operators in the informal sector do not obtain licenses from the relevant authorities. The level of organization is generally low with little access to organized markets, formal credit, education and training.

With the burgeoning population and scarcity of employment opportunities, the sector has come into focus as an important employer of the surplus labour. The sector is very robust with the growth in employment opportunities being attributed to the use of simple and inexpensive technologies with less specialization skills, ease of entry and exit, low capital investment, absence of registration and other official formalities.

The foregoing scenario describes a "footloose" segment of the economy that may

not easily be regulated by the Kenya's Competition Act. This has sometimes led to undesired consequences like the emergence of cartels in the matatu transport sector. While the Act targets formal organizations which may manipulate market to their own advantage, it does not exclude the activities of the informal sector from investigations as no threshold is defined for regulation or investigation purposes.

The principal objective of the Restrictive Trade Practices, Monopolies and Price Control Act, Cap. 504 of the Laws of Kenya, is to encourage competition in the Kenyan economy. It prohibits unfair trade practices and abuse of dominance. By encouraging competition and preventing the abuse of dominance, the Act gives the SMEs, the chance to remain in business and only exit due to other reasons not traceable to market barriers. Efficient

performance by market operators, guarantees benefits, to both consumers and producers. The Act has welfare implications as it is geared towards fair income distribution, employment creation and increased survival of SMEs operations in Kenya. It should be noted that SME's are currently responsible for a substantial portion of Kenya's domestic trade and employment. Hence there is a need of improving and maintaining the competitive environment for SME's. To attain this, there is need of amending the current Act to give SME's special treatment (block exemptions) in their bid to access their respective markets. This may be achieved through joint efforts in the area of input purchasing and marketing of their products and services for a specified period of time.

Another area which needs to be explored, is

the area of setting specific investment thresholds for multinationals. This will go along way in protecting SME's from unfair competition from giant firms and improve sub-contracting terms between the informal and formal sectors for goods and services supplied by the SME's.

Chapter Seven

INTERNATIONAL COOPERATION

New technologies are driving the process of competition and globalization of national economy to greater heights and providing significant opportunities to price fixing cartels to exploit Developing Economies and third world consumers because of the lack of effective competition conduct rules and enforcement regimes. In addition, the emergence of the global electronic market-place also presents a range of challenges for regulators and market participants. These challenges relate to:-

- Competition issues -- convergence of markets, price fixing, access arrangements and acquisition.
- Consumer protection issues -- promise and performance, consumer liability, security, privacy, consumer redress and dispute resolution, safety standards, etc.
- Enforcement issues -- evidentiary issues, jurisdictional issues, choice of law, frauds and scams.

Because of these problems, competition agencies world wide cooperate in the training of competition officials and exchange of non-sensitive information on company operations. In this regard, the Monopolies and Prices Commission (MPC) participated in the following international events during the year under review:-

- Two officers were attached for three weeks in April, 1999 with the Australian Competition and

Consumer Commission in Canberra and Sydney.

- Two officials were attached for two weeks with the Italian Competition Authority in May, 1999.
- Two competition officials were attached for two weeks in Germany in June, 1999.
- One official participated in the international conference on Mega Mergers, Berlin, Germany in May, 1999.
- The Monopolies and Prices Commission (MPC) sent a delegate to the OECD Conference on Trade and Competition held in Paris, France in June 1999.
- Monopolies and Prices Commission sent a delegate to the COMESA/UNCTAD Regional seminar on Competition Policy and

Law, held between 1st and 6th June 1997 in Lusaka, Zambia.

- One officer attended the Anti-Monopoly Act Course in Tokyo, Japan in August/September 1999.
- Monopolies and Prices Commission (MPC) provided on the job training to two officials from Zimbabwe Industry and Trade Competition Commission, the Chief Executive and the Legal Counsel in September 1999.
- Monopolies and Price Commission sent a delegate to the preparatory meeting of experts on the formulation and development of EAC Competition Policy in December 1999.

Chapter Eight

THE WAY FORWARD

Competition policy is a broad topic comprising rules governing the conduct of firms and a wide range of legislation, policy, government and community action. It affects sectors of the economy in different ways, depending upon the nature and level of competition existing in each sector. To deal with this complexity, Kenya must develop a framework of principles, processes and institutional structures which are sufficiently flexible to deal with the scope of the subject and different sectors of the economy. The following action programs are deemed necessary for an efficient, effective, democratically transparent and community oriented economic regulation in the country:

1. Strengthen the capacity of the national competition office with expertise and competence.
2. Re-organize the office into an autonomous authority with quasi-

judicial powers to impose sanctions for restrictive trade practices, unconscionable conduct and abuse of market power.

3. Resources for public education, production of competition policy guidelines, directions and interpretation, radio and television programs etc. should be provided to help in the cultivation of a competition culture in the country.

4. The existing law should be repealed and a strong, effective and flexible legislation enacted to promote nationally consistent approaches to reforms of the various sectors of the economy so as to avoid conflicts and cost of diverse industry/sector specific or sub-national regulatory frameworks.

5. A skills development program and

suitable recruitment of trainees should be considered so that in another five years or so, the country will have a team of competition policy specialists to manage even more complex competition issues which will definitely increase as the economy grows and competition from the world market increase.

6. By end of December 1999, more than 80 member states of the 134 membership of WTO had adopted Competition Policy or in the process of doing so and Kenya's development partners are increasingly applying competition policy rules to promote and protect their national interest. Kenya and the other member states of the East African Community (EAC) cannot afford to remain spectators in the

game of competition and as such they must upgrade their regulatory frameworks.

7. The EAC member states must work as a block in solving competition problems. Regional laws are applied extra-territorial and · therefore harmonize the application of competition across countries. The European union has applied this principle to cases touching on cross boarder matters. The Australia/New Zealand group and Latin American group have moved towards this direction.

8. The EAC Competition Agenda should therefore be put on a priority status among EAC programs and a permanent working group be established to continue with this work until it is completed and

implemented by all member States. All stake-holders in the region should be fully involved so that governments will own the results of the work.