Final Report

COMPETITION POLICIES FOR GROWTH:
LEGAL AND REGULATORY FRAMEWORK
FOR SSA COUNTRIES

Institutions:

Institutional Reform and the Informal Sector ("IRIS")
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1. Introduction

This study was designed to consider competition-promoting strategies for transitioning and developing economies. Although private sector activity and competitive market forces depend on many factors such as access to resources and macroeconomic and political stability, the study was based on the premise that governments can augment markets by providing a set of laws, regulations, and implementing institutions, to both facilitate private sector commercial activity and also mitigate private and public restraints on commerce. In particular, the study addressed the role that Western-style "antitrust" or competition laws should play within the overall framework for promoting competition.

In the history of Western economies, narrowly defined antitrust laws were introduced relatively late in the process of development and were designed to police already functioning market economies, not to facilitate or create them. Such laws came about as one response to the perceived excesses of vibrant market forces, which had been unleashed through the prior evolution of capital markets, property and contract rights, commercial, corporation, and banking laws. In light of the historical background to antitrust laws, we question whether the so-called competition laws now used in developed market economies are inappropriate and even counter-effective when applied to transitioning and developing economies, particularly if grafted onto an existing, weak institutional framework.

Nevertheless, many transitioning and developing countries have been encouraged, and

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1 Throughout this report the countries included in the study will be characterized as "transitioning and developing" to emphasize that our observations may be limited to countries exhibiting both characteristics. The observations may not be applicable to other countries which are also transitioning from a state-dominated economic system but are in differing stages of development, countries such as the nations of Eastern and Central Europe.
frequently required, by donor agencies to adopt and implement Western-style competition laws at relatively early stages of market development. Sometimes the process of doing so has deflected attention from other reforms, such as basic constitutional, commercial and economic programs, reforms which seem more fundamental to the establishment of a vital market economy and to the process of promoting private sector growth. Moreover, competition laws are not "institution-neutral"; they are almost uniformly dependent upon the creation of new government enforcement authorities and institutions. They therefore demand fiscal and human resources that are frequently in short supply in transitioning and developing economies, and they often require ongoing technical assistance from external sources as well.

The goal of this study was to provide an analysis of the various possible components of competition policy, broadly defined, including an assessment of the relative priority of narrowly defined competition laws. In other words, the study asks: what are the best legal and economic reform strategies for promoting the growth of the private sector, and how prominent a role should competition law play in that process? The question was addressed in several ways. A desk study reviewed the current state of legal and economic reforms in each of the three countries, with particular emphasis on those reforms intended to stimulate private sector growth, including sector-specific reform programs. Interviews with public and private sector representatives identified some of the basic issues affecting competition policy in each country. The issues identified through the interviews provided the basis for a survey directed at a sampling of public and private sector firms.² This final project paper draws together conclusions and policy

² As will be more fully explored, infra, constraints led to the decision to conduct the survey as designed only in Madagascar. In Senegal and Benin, the survey instrument was modified to accommodate more limited sector studies.
recommendations from the desk study, the interviews, and the surveys.

A principal hypothesis underlying the study’s research plan was that transitioning and developing countries have accorded too high a priority to drafting competition laws and creating competition law enforcement agencies similar to those found in more developed countries. The corollary hypothesis is that efforts would be more effective at creating competitive forces if focused on the design of a long-term strategy for building a comprehensive legal and institutional infrastructure. For example, creation of a focal point within the government for conducting research on market behavior and performance and for providing informed competition advocacy might be a first step in eliminating governmentally generated barriers to entry, which are often prevalent in these countries. Such study and advocacy functions could serve as precursors to the creation of a Western-style enforcement agencies, expanding at a later point in time to address restraints on trade that arise from the private sector.

Conditions in the countries under examination suggest that many have committed themselves prematurely to the drafting and implementation of complex, Western-styled competition laws. These conditions frequently include:

- limited government resources (both fiscal and human);
- a history of excessive government regulation of the private sector;
- favoritism and problems of corruption often associated with government regulation of private sector activities;
- limited physical infrastructure, which directly impedes entry and expansion (e.g. under-developed transportation and telecommunications capacity);
- an absence of independent courts;
- a lack of judicial officers trained in the application of commercial law and the use of economic analysis, and
- a near absence of other, more fundamental components of the legal infrastructure necessary to facilitate private sector growth.

In light of these conditions, narrowly defined competition laws may at best be of limited utility in
promoting competition and at worst represent a significant detraction of human and economic resources from the more fundamental needs of transitioning and developing economies. In addition, private and public sector expectations associated with the adoption of competition laws can be exaggerated, misinformed, and even contradictory. Competition law enforcement institutions may also deteriorate into an additional focal point for corruption and/or excessive government interference in the economy, particularly where provisions are made in the law for firm or industry specific exemptions, or continuing authority to regulate prices and output.

As a counterpoint, we argue that the recommendation of Western-style competition law systems for transitioning and developing economies should include explicit recognition of their inherent limitations, typical uses, and opportunity costs. Such recognition would accommodate the conditions listed above and consequently work to build the missing or weak institutional structure needed for effective implementation of Western-style competition laws. Policy options not usually associated with the label "competition" may actually provide larger impetus to competitive forces than a so-called competition law and therefore should be considered either in conjunction with or as substitutes for such laws. Predicate acts might include capital improvements to transportation and telecommunications capacity. Predicate legal reforms might include price deregulation, the elimination of licensing-related entry barriers, and the disruption of established collusive habits such as those fostered by laws mandating membership in industry associations. Collectively, these types of efforts could promote the emergence of healthy markets in various sectors by targeting conditions of entry and expansion more directly than does a competition law.

Within transitioning and developing countries, there is a great deal of variance in the
conditions just elaborated, suggesting that certain treatments may be most effective at particular stages of the reform process. One goal of our study, not fully realized, was to propose a prioritization methodology that would assist transitioning and developing countries in identifying optimal sequencing of competition-related reforms; such a methodology would take into account the specific situation of any one country and a more holistic perspective of the conditions necessary to create markets.

Based upon expressions of interest from USAID missions in Sub-Saharan Africa, the study involved three countries: Benin, Madagascar and Senegal. The study team consisted of two law professors and two economists with scholarly and field experience in a wide variety of transitioning and developing economies, as well as collaborators in each of the three countries, with varying experience in conducting research of the type proposed. Pursuant to EAGER guidelines, the study was not designed as a technical assistance project on any specific competition law or antitrust mechanism. Although a variety of factors rendered our findings "preliminary", the results nevertheless should have significant implications for policy choices, specifically the nature, scope, and appropriate priority to be accorded to competition law programs. We also hope that similar studies, refined based on our experience, may in the future lead to the generation of more comprehensive and more reliable data, from which more specific recommendations can be generated.

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3 Externally funded competition law drafting and implementation projects currently are underway in Benin and Madagascar.
2. Study Results: Findings on the Legal Framework

Findings on the current legal framework in each of the subject countries derive in large part from the final design phase of the study, which consisted of background desk studies and visits to two of the identified countries. The legal framework portion of the study evaluated several factors important to the eventual completion of the study. These factors included:

(1) the current state of economic and legal reforms designed to promote transition to a private, market economy in each country, including issues related specifically to competition law development;

(2) the presence of evidence of indigenous support for a principal study hypothesis, \textit{i.e.}, that relative to other identified needs, too high a priority is being placed on introduction of competition law modeled on Western antitrust and competition law systems; and

(3) the feasibility of completing the implementation phase of the study, which would involve sector specific analyses, the collection and evaluation of survey data designed specifically for the study, and the selection of in-country collaborators.

In pursuit of support for the study’s second hypothesis, final design phase visits also attempted to identify specific examples of pro-competition policy options other than Western-style competition laws, options that either could be or were being pursued.

As is also explored further in the context of each country, the team’s initial methodology involved in-country interviews of various public and private sector representatives interested in commercial reforms. Interview topics generally included:

- the current political and economic climate;
- completed and anticipated legal and economic reforms designed to stimulate private sector growth;
- completed and anticipated administrative and judicial reforms;
- the current state of privatization efforts;
- the relationship between the formal and informal sectors;

\footnote{A similar background study was later completed in Senegal. See Section 2C, \textit{infra}.}
perceived reform priorities in terms of the legal and economic infrastructure necessary to
promote and sustain private sector growth;
the current status of competition law specific reforms; and
the adequacy of physical infrastructure, especially telecommunications, transport, and
energy.

The issues identified through the interviews supplied a basis for questions later included in the
survey instrument, which was directed at a broader sampling of public and private sector firms.
Results of these interview efforts, conducted in the final design phase, are evaluated below for
each of the three countries.

A. Benin

In-country research began with a visit to Benin on March 8-13, 1998. The principal
investigators for this visit were Dr. Georges Korsun of Deloitte Touche Tohmatsu and Professor

Note on Methodology. The visit to Benin consisted mainly of interviews conducted in
Cotonou. In five days, the principal investigators interviewed fifteen representatives of
government agencies, universities, trade associations, and private enterprises in Benin and met
with the local missions of USAID and the World Bank. (A list of interviewees is included in
Appendix 1.) To prepare for the interviews, the principal investigators reviewed (a) the
published economic and legal literature on economic reform in Benin and West Africa and (b)
reports prepared by other advisors who recently have studied the process of transition in Benin.5
They also developed questions based on previous experiences in gathering data and conducting

5 See, e.g., Benin Macro-Governance Assessment and Recommendations for Action: Revised Final Report (Mar. 3,
1997) (prepared for the European Commission and USAID by ARD, Inc. and consultants from the European Commission and
Benin).
empirical work in transitioning and developing countries.

The State of Legal and Economic Reforms in 1998. In 1990 Benin embarked on an ambitious program of economic and political liberalization. Recent economic policy reforms have targeted increasing investment by domestic and foreign parties in Benin, but the enabling conditions needed to facilitate such investment have been wanting. A common theme expressed by public sector and private sector officials in interviews was that the government has a great distance to travel before it delivers on its stated commitment to make the private sector "the engine of the economy."

Discussions about the state of economic reform identified several major factors that determine the rate of private sector development and investment. The first consists of significant legal requirements that entrepreneurs must satisfy in order to establish new businesses. Prospective enterprises typically must spend months obtaining official approvals and must pay large fees to operate in the "formal" sector.

A second significant condition is the fact and perception of extensive corruption in public administration. Elaborate regulatory requirements create many opportunities for public officials to extract bribes and other forms of side payments from existing or prospective business operators. Delays in gaining regulatory authorizations can be interminable unless the operator is willing to pay civil servants to expedite the process.

A third frequently-mentioned circumstance is the inability of entrepreneurs to obtain medium- and long-term loans from Benin’s financial institutions. Many interviewees noted that the Beninese financial services industry caters mainly to the needs of traders, brokers, and various other intermediaries who demand short-term credit.
A fourth, related condition is a commercial culture that emphasizes trading and quick-turnaround transactions and de-emphasizes long-term investments in manufacturing or other forms of production. Several officials cited the culture of trading as an impediment to stimulating investment in long-term projects.

A fifth important feature of the Beninese business environment is the presence of a large informal sector. Many firms operate entirely outside the formal registration process. Many others are registered, but use their registered business as a front behind which the manager operates an unrelated and unregistered business. The chief inducements to operate informally appear to be high tax rates and the time-consuming, corrupt administration of various regulatory commands.

The operation of a dynamic and growing informal sector not only denies the government a source of tax revenues, but it may also impose a significant cost disadvantage on competing enterprises in the formal sector. In turn, formal sector firms may devise anticompetitive strategies to block or diminish the threat from the informal firms. For example, some formal sector operators pointed to the presence of a large informal sector as a reason to form industry-wide cartels to establish common policies for pricing and service and to press the government to regulate prices and other terms of operation.

A sixth formative condition is the frailty of Benin’s basic transportation infrastructure. Business operators experience considerable difficulty moving goods through ports and airports and throughout the country. Improvements in transportation networks by themselves likely

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6 For example, entrepreneurs engaged in the trucking industry estimated that informal firms operate over 80 percent of all trucking capacity in Benin.
would stimulate competition and promote growth.

**Initial Testing of Study Hypothesis.** The visit to Benin supported the hypothesis that creating a traditional antitrust system modeled on Western experience would be a mistaken way to begin the formulation of a competition policy program. As applied in the Beninese context, competition policy could begin with programs to address three objectives:

1. to educate government officials, private sector operators, and the public generally about the value of competition as a governance mechanism in the economy;
2. to dismantle publicly imposed barriers to new business entry and expansion; and
3. to resist the establishment of new government policies that suppress business rivalry.

The initial identification of alternative policy options follows the study’s corollary hypothesis, namely that a relatively broadly-conceived competition policy program can contribute significantly to private sector development and economic growth in Benin.

A pro-competition policy could reinforce Beninese efforts to identify and exploit the country’s economic comparative advantages. Many interviewees noted that Benin has considerable potential to serve as a trading hub and transportation corridor in West Africa. Realizing this objective is likely to require a mix of strategies that influence the degree and quality of competition, including public investment in better roads and port facilities, reductions in tax rates and other regulatory obstacles to business start-up, simplifying customs procedures, and increasing the integrity of public administration.

The initial visit also verified expectations about the difficulties of creating new competition policy institutions in an environment marked by, among other weaknesses, a scarcity of government resources, limited expertise in the fields of microeconomics and competition law,
and inadequate controls on the exercise of discretion by public officials. West African countries might realize economies of scale and scope by relying on cooperative, multinational arrangements to perform certain government functions that promise to increase competition. For example, the Government of Benin has invited the competition agency of Cote d'Ivoire to assist it in reforming the governance structure for Benin's parastatals. It may be possible for Benin and neighboring West African countries to use regional entities to serve as institutional foundations for creating and executing competition policy.  

Selection of Collaborators and Development of Sector Study. In looking for potential collaborators in Benin, we were not successful in identifying interested institutional partners. Therefore, our efforts centered on identifying individual faculty members affiliated with the national university in the fields of law and economics. Ultimately, we selected Professor Simeon Fagnisse of the Faculty of Law.  

The selection of sectors for the in-depth investigations took place during the pilot testing phase of the program in Dakar in late Spring 1999 in discussions with Professor Fagnisse. Sectors were selected to present a cross-section of market structure and formal/informal operations and also to match where possible the sectors selected in Senegal. The final selection included textile and print media (as in Senegal), and beer.

B. Madagascar

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7 OHADA (Organization for the Harmonization of Commercial Law in West Africa) recently established a regional commercial court to serve as a forum for resolving contract disputes.

8 During our visit, we also discussed a possible collaboration with the State Statistical Service. In retrospect, it might have been more effective to partner with the SSS for formal data collection and with academicians for the analysis. A
The second country visited was Madagascar. The visit was conducted by principal investigators Dr. Cynthia L. Clement of IRIS and Professor Andrew I. Gavil of the Howard University School of Law, from March 19-28, 1998.

**Note on Methodology.** With the assistance of USAID/Madagascar, the principal investigators conducted interviews in Antananarivo over five days with fourteen representatives of the public and/or private sector. These representatives were selected based on either their direct involvement in the development of a new competition law or more generally with privatization and commercial reform issues. (A list of interviewees is attached in Appendix A.)

In preparation for the interviews, the principal investigators reviewed the published economic and legal literature on Madagascar. A set of prepared questions was used in each interview to assure, to the extent practicable and logical, consistency in the type of information gathered. Interviews were, of course, individualized as necessary. For example, the principal investigators asked individuals actually engaged in drafting and/or reviewing the new competition law very specific questions related to the law and its provisions that would have been inappropriate if directed to interviewees with only a passing knowledge of the law’s evolution.

**Current State of Legal and Economic Reforms in 1998.** Madagascar’s transition to democracy and free market status began fitfully in 1991 and has proceeded unevenly since that time. Free elections were held in 1993, significant economic reforms came into play in 1994, and a new Constitution was adopted in 1995. An IMF and World Bank supported Structural Adjustment Program (“SAP”) was initiated in 1996. Although it appears that the initial results of partnership with the SSS might have yielded data of similar high quality as Madagascar.
the SAP have been promising in terms of macroeconomic stabilization, continuing political instability and attention paid to two additional constitutional referenda have slowed the pace of microeconomic changes. Several interviewees commented on the adverse impact that political instability has had on productive investment and business planning.

Warranted legal and regulatory reform efforts were then underway, specifically including reforms designed to generate the legal infrastructure necessary for the functioning of private markets. These efforts include the collection, publication and possible revision of the commercial code, as well as efforts to reform banking, financing, taxing, bankruptcy, real estate leasing, and dispute resolution laws. It was apparent, however, that continuing uncertainty as to the stability of the political climate was taking its toll on the rate at which reforms could be completed and the efficacy with which they could be implemented.

Also among the legal reform efforts was drafting of a new competition law. Although an initial draft was prepared by the Ministry of Justice and adopted by the General Assembly in September 1997, the government did not promulgate it when the law met with extensive criticism from the World Bank and the private sector. These criticisms focused on the excessively "regulatory" nature of the law, which arguably perpetuated a system of extensive government regulation of private sector business activity. Efforts to draft a revised competition law were undertaken, and responsibility for drafting the law was committed to a new institution, the Competition Reflexion Committee (CRC). Representatives from both the public and the private sectors comprise the CRC, which has retained a private consultant to assist in the competition law-drafting project, with funding from the World Bank. That consultant, working with a Canadian counterpart, prepared a new draft of the law in December 1997, which was
revised again in March 1998. The principal investigators were told that a final could be submitted for adoption as early as late spring, 1998. We recently learned that the law has yet to meet with final approval, and another draft was completed in the Fall of 2000.

**Initial Testing of Study Hypothesis.** Only one of the fourteen (14) interviewees questioned during the visit identified the competition law as a "high priority" for Madagascar -- and that interviewee was the representative of the donor agency sponsoring the re-drafting of the law. Every other interviewee identified other impediments to private sector development as more important and deemed other reforms as higher priority than the competition law. These other impediments and/or reforms included: political instability, inadequate physical infrastructure, tax policy reform, credit and financing reform, commercial code reform, and reform of the real property and leasing laws. Moreover, all doubted that resources could be found successfully to implement the competition law. The 1998 draft would have mandated both the creation of an additional government enforcement agency and the use of a judicial system, which was perceived as either susceptible to corruption or ill prepared to handle new, complex commercial cases. The suspected lack of ability to implement a competition law raised further concerns that adoption of the law would exacerbate the already deeply rooted problem of "absence of rule of law." Several interviewees cautioned that the adoption of additional "unenforceable" or "unenforced" laws would further promote the prevalent public perception that the nation was ruled by privileged people rather than by laws applied equally to all.

Perhaps most troubling in competition law-specific discussions was the absence of any apparent consensus as to the goals and purposes of a competition law. Objectives offered for the law from different interviewees were often inconsistent ("protect exporters" vs. "protect
importers”) and included goals best suited for other types of reform efforts (e.g., "control the informal sector"). This lack of a realistic and informed consensus as to the purposes of the law, considered in conjunction with the identification of more urgent, institution-neutral reforms, the apparent lack of resources to implement a competition law, and the absence of prosecutorial and judicial expertise to enforce the law, strongly supported the study’s principal hypothesis that enactment of a Western-style competition law might be premature at best.

More promising for both the Malagasy economy and the corollary hypothesis of this study were the purpose and outputs of the CRC. As an alternative to the Western-style antitrust enforcement agencies, this committee provides an example of how a public-private pro-competition advocacy agency can be structured. The committee’s mission was to identify impediments to private sector growth, design solutions to those impediments, propose solutions to the government, and then support the implementation of solutions that are adopted by the government. As of 1998, the CRC had conducted a series of participatory workshops with the outcome that a list of prioritized areas had been identified for future work. In descending order, the priorities were:

- strategies for privatization
- long-term financing
- fiscal/taxation policies
- infrastructure rehabilitation and expansion
- the legal and institutional environment for business
- decentralization of government decision-making
- access to both economic and administrative information

If the latest draft law is passed, the CRC may be replaced with a more traditional agency that will report to the Ministry of Commerce.
Selection of Collaborators and Development of Sector Study. Final design phase interviews disclosed that MADIO (co-financed by the EU and the French government and operated in partnership with INSTAT, the National Institute for Statistics) had for several years been engaged in improving the Malagasy government’s ability to collect economic data. The principal investigators were persuaded, after reviewing MADIO’s published reports and interviewing several staff members, that the organization constituted a strong collaborator for the study. It appeared that MADIO had developed reliable sampling techniques and databases covering the universe of Malagasy enterprises, as well as necessary field expertise, that could be utilized to conduct a nationwide survey.

MADIO was retained to administer the survey (reformat the instrument into codable forms, draw a stratified sample, train interviewers and coders, conduct the interviews, code and enter data, run consistency and data accuracy checks, and prepare a computer data file ready for statistical analysis) and to provide an analytical report on the topic of their choice related to competition issues in Madagascar.

C. Senegal

Senegal is the third country in the study’s sample, but due to various constraints it was not possible for members of the team to visit the country during the final design phase. A visit was conducted, however, in the late spring of 1999, by Dr. Georges Korsun, Professor Gavil, and Ms. Heather Cameron of IRIS, with the intention of combining several goals: (1) gathering current data on competition law reform efforts; (2) identifying potential collaborators, and (3) testing the survey instrument.
Note on Methodology. The interview methodology utilized for the initial visits to Benin and Madagascar was also used during the visit to Senegal. During the week of May 17th, 1999, the team interviewed nine representatives of the public and private sector on issues relating to private sector reform in Senegal generally, and the Senegalese Competition Law particularly. As noted above, however, the principal investigators also used this visit to conduct a pilot or test of the study survey, which is further discussed, infra, and to identify collaborators.

Current State of Legal and Economic Reform in 1999. Senegal is characterized by a substantially greater degree of political stability than the other countries included in the study and has weathered last year’s surprise election results and a power hand-off from the Socialist Party quite well. This stability, however, has not yet translated into any consistent or sustained set of economic reform policies, but rather into a gradual blurring of the line between party and state, which has facilitated the intrusion of the state into the economy. The Senegalese legal system, in general, continues to warrant significant reforms, particularly with respect to facilitating private sector development. One important motivating factor for reform is the drive to harmonize commercial laws and provide independent dispute resolution under the OHADA regime. Independently, the Ministry of Finance has set as a top priority the reduction of tax evasion by informal sector operators. A system of presumptive taxes has been put in place that targets small operators and businesses.

An interesting dimension of the objective of reducing "unfair competition" from the informal sector is that the vast majority of informal operators are not fluent in French, which, as the official language, is used in the promulgation of laws and regulations. Thus many operators would face significant difficulties in complying with the tax laws, even if they had an inclination
to do so. The type of firms that constitute the informal sector is also surprising since at one time about half were in operation for more than five years and almost all of them were essentially companies of several associates. Informal sector firms thus appear to be entrenched businesses not very different from their formal sector counterparts except in the cost advantages that they enjoy as a consequence, at least in part, of tax evasion.

Senegal had a "competition law" dating back to 1965. In truth, that law was not what is typically recognized as a competition law in more developed market economies, but a very elaborate price regulation law that lead to price controls in virtually all sectors of the Senegalese economy. In 1994 Senegal embraced a World Bank sponsored, broad based initiative to liberalize its economy. "PASCO’s" cornerstone was a 50% currency devaluation, but also included many legal reforms. It included revision of the "competition law, which was deemed a high priority -- but seemingly more so because of the extant 1965 price regulation law than any concern over anti-competitive practices. In any event, adoption of a new competition law was repeatedly described to the team as a "conditionality."

Apparently without technical assistance, the Ministry of Commerce, with some support from a World Bank sponsored public-private sector "Reflexion Committee", as in Madagascar, drafted a new "Loi de la Concurrence." The bulk of the 1994 law, however, is focused on price deregulation, and established a new, more limited regime for price regulation to replace the framework from the 1965 law. Although it carried over specific authority to regulate prices, it did so in a more limited way, and was viewed as a "step" towards eventual reliance on markets without price regulation. Application of the price regulation provisions is by the Ministry of

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Article 3 of the 1994 law created a Competition Commission, comprised of seven (7) members, chosen as follows: two members formerly with the court of appeals; two members from the private sector, and two members chosen because of their expertise in economics and/or competition. In addition, authority to designate a seventh member is delegated to the Minister of Commerce. One of the judicial members automatically serves as the "President" of the Commission.\textsuperscript{10} The principal responsibility of the Commission is to enforce some very broadly drafted prohibitions of "anti-competitive practices." These prohibitions appear to have been modeled by the Senegalese on the French competition law. The 1994 competition law also includes a provision authorizing other branches of the government to forward questions that touch upon competition law issues to the commission for its advice and counsel.

Although adopted and signed into law in August 1994, the law was not implemented until the Summer of 1996, when, by decree, the Commission was created and commissioners appointed. It was provided with a minimal budget (the study team was told that it was $4000/year), no staff, no physical offices and no authority to initiate investigations. Even the Commissioners have been unpaid positions and largely serve gratis. As of March 1997, the Minister of Commerce, head of the new commission, reported that no budget provision had been made to enable the launch of operations.\textsuperscript{11} Apparently, the government’s fiscal constraints have

\textsuperscript{10} According to a June 13, 1996 Presidential Decree, the actual members are: President, M. Ndayr Toure; M. Abdoulaye Sakho and M. Bruno Guerin, respectively First and Second Vice Presidents of the Commission; M. Omar Diouf (along with M. Sakho, a law professor, appear to be the "expertise" appointments); and M. Chimere Diop. M. Amadou Dieng is the Ministry of Commerce appointment. We do not know why it appears that only six of the seven members were appointed.

\textsuperscript{11} Interview notes from Clive Gray, HIID, November, 1997.
been too tight to afford creation of a new agency.

Several other implementing decrees were also issued in 1996 and 1997, but deal mostly with the price regulation portions of the law, which alone have been operative. As a consequence, no cases have been brought under the law’s anti-competitive practices provisions, only one investigation was initiated (still under way in the insurance industry as of Spring 1999), and no requests for advice were received from any other branch of the government. Moreover, no efforts were made to educate the business community generally about the existence or provisions of the law. Finally, there did not appear to have been any efforts to secure donor support for any expansion of the Commission’s operations or training. In short, the 1994 law has been a law without any actual functionality.

Since the Commission was created in 1996, many sectors have been liberalized. The government, firms and consumers are all becoming aware that some of those liberalized sectors are working well, characterized by an abundance of new entry and lower prices, whereas others appear to be dysfunctional -- prices have remained remarkably stable and new entry has been slow to develop. From the team’s various discussions, it was clear that the government, and some in the private sector, believe that horizontal price fixing is apparent in some sectors, as well as collusive boycotting (perhaps to enforce price fixing). Some of the information shared with us appeared compelling.

As a direct consequence of the information on actual practices gathered to date, the Senegalese have undertaken to "restart" the entire competition law process. The study team was provided with a new draft law, prepared again by the Ministry without any technical assistance, and told that the government has proposed to USAID that a technical assistance and training
project be established to help establish the Commission as a functioning enforcement agency.\textsuperscript{12} In addition, the Ministry of Commerce appeared ready to authorize the Commission to undertake investigations of several sectors where it suspected that anti-competitive practices might have been the source of price stability, depriving the economy of the full benefits of liberalization.

**Initial Testing of Study Hypothesis.** At first glance, this evidence of possibly serious, anti-competitive conduct in the Senegalese economy appeared to be inconsistent with the study hypothesis that inappropriately high priority has been given to the adoption of Western-style competition laws. Moreover, in addition to the conduct cited to the team, previous study of the Senegalese economy by one of the team members indicated that the industrial sector could still be described as highly monopolistic with a large proportion of state and foreign ownership. Many firms operated for a long time under a regime of *convention speciales*, which provided protection from both foreign and domestic competition as well as tax advantages.\textsuperscript{13} Even without these conventions, the industrial sector is highly concentrated. The combination of this structural evidence with the apparent findings of the Commission suggested that although other pro-competition legal reform still remained a higher priority, there might be some role for a Western-style antitrust statute to play in Senegal at this time.

But upon further reflection, a different conclusion seemed warranted. If we start from the assumption that Senegal is similarly positioned to the study’s other subject countries, then Senegal’s experience contradicts the study hypothesis. If that assumption is not true, however, 

\textsuperscript{12} We do not know the current status of that effort, which had not been initiated by the time of our visit in the spring of 1999.

\textsuperscript{13} As of 1992, 15 firms, all large and monopolists, operated with *convention speciales*. The impetus for reform there is most likely to come from the Finance Ministry, disturbed at the large revenue losses (estimated at 48 billion
then another interpretation of the interview data is possible, and it supports the hypothesis that competition laws should be implemented in stages appropriate to each particular country’s development trajectory.

Today, Senegal may have moved on to a higher stage of development in which a competition law, perhaps a limited and focused one, may have an important role to play. But when it was compelled to adopt its first competition law in 1994, it was more comparable to the current status of Benin and Madagascar in terms of its transition efforts. It is significant and consistent with our study’s hypothesis that from 1994 to 1999 the competition law had little role to play and was virtually ignored as a fiscal priority. During that time, however, other reforms more critical to the initiation of markets in various sectors took hold. With those reforms now bearing fruit, the economy may be in need of the policing function of a competition law. This may possibly distinguish Senegal today from Benin and Madagascar and provide them with some useful lessons. It may also explain why Benin and Madagascar have delayed in adopting a final law for some time.

This is not to suggest that the anti-competitive practices typically reached by competition law statutes were an insignificant element of the Senegalese economy in 1994. Rather, the Senegalese experience suggests that, in terms of transition priorities, broad and pervasive impediments to competition are more effectively addressed by recourse to fundamental regulatory reform than to traditional antitrust legislation - especially in the early stages of transition. Even now, the reform of the labor code, for example, could remove production rigidities and permit more flexible and competitive responses on the part of operators. Likewise,
external competitive pressures may greatly reduce the protectionism and market-sharing arrangements that have characterized the regulatory framework in large industries for many years. Also consistent with the study’s hypotheses is the observation that passage of a law does not automatically yield perceived differences in behavior. Western-style antitrust laws require an institutional infrastructure for implementation, and the conditions necessary for the successful creation of that infrastructure are frequently wanting in the early stages of transition and development. With some of Senegal’s market reforms now flourishing, the time may be ripe for true competition law reform, but it will require a focused and sustained effort on the necessary institution building.

Selection of Collaborators and Development of Sector Study. During the week of May 17th, 1999, the study team interviewed and evaluated five potential collaborators, from which a team of three was selected. Each of the three selected collaborators had some relevant experience in business-related research, but unfortunately none had survey experience. As in Benin, we were not successful in locating an institutional partner interested in working with us on our study.

D. Preliminary Conclusions from the Initial Interview and Desk Phase of the Study

In each instance, the principal investigators were encouraged that implementation of the planned study would successfully yield policy-relevant findings. Each of the three nations included in the study has been pursuing reform programs designed to encourage the development of the private sector and facilitate the transition to a market-based economy. All have either adopted or are currently considering the adoption of a competition law. All have struggled with
the question of "prioritization" of reforms, and with other, competition-relevant dilemmas, such as the tension between the "formal" and "informal" sectors, that directly impact the prioritization question.

Moreover, conditions in the three countries differed sufficiently that, as a group, they present a diverse set of subjects, which we hoped would add greater validity to the study’s principal hypothesis. Each subject country may be at a different stage of development, and each has a varied universe of agricultural and industrial sectors. Nevertheless, due to similarly targeted reform efforts directed to crucial infrastructure industries (e.g. telecommunications and transport), good sector candidates for direct comparison emerged. But, as we will explore in the next section, it became clear as well that the intended survey could not be carried out in all three countries due to limited funds and the depth of experience of our collaborators. The decision was made, therefore, to proceed with the survey as planned in Madagascar but to utilize more narrowly focused sector studies in Benin and Senegal.

3. **Study Results: Findings on Business Conduct**

A. **Development of the Survey Instrument**

The objective of the study was to identify and prioritize a broad range of policies for enhancing competition in transitioning and developing economies. For any particular country, an appropriate set of policies can be selected from that broad range, given the country’s specific circumstances and level of institutional and economic development. This objective required first

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14 However, three countries presents a very limited sample from which to draw generalizable conclusions, and the principal investigators realize that additional work needs to be done to develop the ideas presented.
of all a clear and substantiated notion of what are the real impediments to competition and some sense of their relative importance. It also required some understanding of the history of competition policy and broader private sector development reforms in each country. Because policies are implemented in a political context, it also required some understanding of public perceptions about the policy orientation and credibility of the government. Finally, because competition as a policy objective is a fresh concept in many of these countries, it was important to ascertain a sense of the public and private sectors’ expectations about what a well-designed competition policy might be and might accomplish.

The survey instrument was designed with these general goals in mind. It sought to collect empirical information: (1) revealing the structure and current competitive conditions in each sector of the market surveyed, including information on informal sector activity; (2) identifying perceived impediments to the entry and expansion of private sector commercial activity, be they public or private; (3) identifying the incidence and types of potentially anticompetitive conduct in the public and private sectors; and (4) evaluating private sector expectations and understandings with respect to the actual provisions of the competition law, as well as the purposes and prospects of competition law enforcement. It therefore targeted questions at the policy, legal, and political environment in each country.

In its initial form, as developed by the four principal investigators, the survey consisted of four sections and some fifty questions. Section I, given to all subjects, contained questions of a general nature concerning "Firm Specific Information", such as firm size in terms of both revenues and employees, profitability, capacity, and methods of operation. Section I also solicited information on formal/informal operations by the firm and on each interviewee’s
perceptions of conditions that would directly or indirectly affect entry or expansion.

Section II turned to "Market Specific Information" and solicited information on the structure and competitive conditions facing the firm’s industry more generally. These questions, for example, asked for estimates of the number of firms in the industry and their relative market shares. It also sought to identify industries in which dominant firms were apparent and in which the government itself continued to play a significant role by operating one or more of the competing firms. Questions were included as well to ascertain the extent to which the industry was operating formally or informally, and to determine the interviewee’s perceptions of the competitive advantages informal firms might enjoy. Finally, the section sought information on the incidence of possibly anti-competitive practices, such as improper types of competitor collaborations, overly aggressive conduct by dominant firms, and an assortment of other traditionally scrutinized business conduct that impacts competition.

Section III focused on "Conditions and Policies Faced by the Firm" and sought more detailed information about the relationship between the public and private sector, especially the role that government policies and reforms might be playing in hindering or promoting private sector development. It asked a variety of questions on the stability and predictability of government policies and asked respondents to rate in terms of priorities the need for a variety of legal reforms, including a competition law.

Finally, Section IV sought information specifically about each interviewee country’s competition law, either in draft form or as enacted. Questions sought to determine each interviewee’s awareness of the existence of a law and efforts to draft or reform it and other questions tested the respondent’s understanding of its purposes and provisions. Additional
questions concerned the specific prohibitions of the law and the prospects for it being enforced by the government. Interviewees were also asked who the likely targets of enforcement might be and whether a variety of listed conditions would present obstacles to its enforcement.

Once completed, the initial survey instrument was translated into French and then shared with the team’s collaborators at MADIO in Madagascar. As noted below, the survey was also further revised after initial piloting in Senegal and Benin. It was thereafter finalized in its French form for use by MADIO in Madagascar during the last half of 1999. (The final version is included in Appendix 2.)

Initially, the goal of the team had been to have the study administered as a broad survey of multiple sectors in each of the subject countries. Due largely to limitations on resources, and to the relative depth of expertise of the selected in-country collaborators, the decision was made to bifurcate the study. The full survey of multiple sectors was conducted only in Madagascar by MADIO. In Senegal and Benin, specific sectors, three in all, were selected by the collaborators in consultation with team members, and the survey was administered to a more limited number of firms (the target for these sector studies was 30-45 firms per country). In identifying sectors to be surveyed, the team’s goals were to select industries covering a variety of market structure and competition issues (e.g. market structure, capital intensity, presence of informal sector). Efforts were also made to have some overlap in terms of the industries surveyed in each country. In some cases, the number of active firms in each industry was small enough that all should have been surveyed. In others, the goal was to randomly select firms from a list of firms provided by statistical offices.

The team’s experience also suggested that the survey needed to be administered during
interviews rather than relying on self-responses. Budgetary constraints somewhat precluded a geographically stratified sample, and thus the survey was limited to the major urban areas of each country. In industries where the informal economy plays a large part, the team relied on its country collaborators to identify firms to be interviewed.

As was indicated above in Section 2.C, the initial visit to Senegal in May 1999 also served the purpose of permitting the survey to be piloted under field conditions. To enhance the value of the pilot effort, the study team selected collaborators in Senegal and then was joined in Dakar by Simeon Fagnisse, the team’s collaborator from Benin. The Senegalese collaborators conducted the pilot interviews in Dakar, while M. Fagnisse and the study team attended and observed. After the completion of the Dakar pilot effort, M. Fagnisse, accompanied by Ms. Heather Cameron of IRIS, returned to Cotonou and repeated several pilots there. In all, the survey instrument was thus test piloted five times in Dakar, and three times in Cotonou. A number of revisions and refinements were made as a consequence of these pilot tests before the instrument was finalized. In Benin and Senegal, it was modified to facilitate its use as a guide to sector studies in lieu of a broader based survey.

It was hoped that the fieldwork, if completed according to study guidelines, would lead to policy recommendations regarding:

- The relative importance of prohibiting traditional restraints on competition (such as cartel behavior) addressed by Western-style competition law versus addressing other impediments not reached by narrowly-defined competition statutes.
- The importance of and possibilities for administrative procedures that minimize government-imposed obstacles to entry.
- The competitive effects of privatization programs in various sectors with differing structures.
• The nature, scope, and extent of existing regional economic or legal organizations and their potential role in competition policy.

As will be discussed in the next section, limitations on the quality of data collected, most especially in Senegal and Benin, negatively impacted the team’s ability to reach more than just preliminary conclusions on a number of the study’s principal hypotheses.

B. Results of Sector Studies – Benin

(This section summarizes the report provided by our collaborator from Benin, Simeon Fagnisse. This report, written in French, is included as Appendix 3.)

The Beninese researchers interviewed a total of thirty firms in three sectors: the print media, textiles, and agribusiness firms. These three sectors were selected because they represent a good cross-section of ownership types, market concentration, and mixture of formal and informal activities.

The print media in Benin is a relatively young industry, since most business activity began only after the recent democratization of the social system. Before 1990, there was only one daily journal. Since 1990, many newspapers have appeared and then disappear shortly thereafter. The lifetime of newspapers does not exceed three years. Only four or five journals established after the liberalization are still on the market. Today there are about twenty journals and daily newspapers. Almost all of the newspaper headquarters are in the economic and political capitals, Cotonou and Porto-Novo respectively. Many newspapers are distributed daily within Cotonou, but only a few reach the other regions of the country during the same day.

The agribusiness industry sector offers consumables ranging from beer to pasta to the
production of flour from wheat, etc. There are many medium-sized enterprises such as
SONICOG (the National Society of Oil Crops), who produces vegetable oils, some of which are exported to Europe. SOBRERA (Benin’s Society of Breweries) makes beer, fruit juices and mineral water. SOBRERA is a joint society at this time, dominated by private capital, with the weak part of the capital controlled by the State. Other than the principle enterprises, the agribusiness industry includes many small enterprises in activities such as cattle-raising, bakeries, and flour mills.

Agribusiness firms face competition from imports from West Africa: drinks, oils, and bread from Nigeria, and beer and cattle products from Togo. Many products are imported from European countries: canned beer, pastries, flours, poultry, etc. However, these are essentially luxury goods, due to high trade protection.

The textile sector consists of three large enterprises and many small artisan businesses or semi- artisans. The largest are:

- SOBOTEX (Benin’s Society of Textiles)
- COTEB (Complex Textiles of Benin)
- SITEX (Industrial Society of Textiles)

The three large enterprises are vertically integrated, including thread making, weaving, and manufacturing of clothing. They purchase essentially all locally produced raw cotton, and very little raw cotton is imported. Small enterprises and self-employed artisans are very numerous and mostly make clothing from purchased cloth.

To some extent, imports compete with the Beninese textile sector, including the FANCY factories in the Ivory Coast and Sotiba in Senegal, special fabrics from Holland, and a variety of fabrics made in China. The textile sector is considered a sector of the future, which explains the
implementation of trade measures to increase their production capacities. Fabric made locally is very strongly protected: in the customs tax, those products have current list-prices. The government politics are aggressive against imports of fabrics from FANCY or SOTIBA originating in West Africa.

C. Results of Sector Studies – Senegal

(This section summarizes the report provided by our collaborator from Senegal, Mamadou Mbenge. This report, written in French, is included as Appendix 4.)

The Senegalese research team surveyed a total of fifteen firms in three sectors: the daily print media, textiles, and vinegar production. These three sectors were selected because they represented a good cross-section of ownership types, market concentration, and mixture of formal and informal activities.

The daily print media in Senegal is composed of five firms, all formal and all with national distribution, although nearly three-quarters of sales occur in the Dakar metropolitan region. The upstream newsprint market, which is also essentially formal with anywhere from one to five suppliers (including imports) is subject to supply disruptions and quality problems. Three of the five newspapers considered extensions into newsprint production but did not implement their plans because of difficulty obtaining financing. In fact, all manners of expansionary behavior were considered except mergers, but not a single plan was realized, largely because of

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15 An additional 15 interviews, with upstream producers in the primary input markets for each of these three sectors were anticipated, but was not undertaken.
financing problems.\textsuperscript{16} Competition in the print media sector is hampered primarily by the fact that the market leader is government owned, heavily subsidized and able to price below its non-subsidized competition. This does not appear to be predatory pricing behavior, but rather classical propaganda leveraging.\textsuperscript{17}

The textile sector in Senegal consists of four private firms and a state-owned \textit{filière}, which, by definition, is highly vertically integrated. This firm enjoys a virtual monopoly on the supply of cotton, despite the availability of imports and the presence of three other domestic suppliers. The price of cotton is negotiated between the \textit{filière} and the other producers, so all pay the same price. It is not clear from the survey data how the state firm maintains its monopoly over cotton supply, but subsidies presumably play a large part, since the government uses the firm to obtain other “social” goals. As with the print media, a number of expansionary behaviors have been considered but none undertaken, again primarily because of financing constraints. The sector is judged by our Senegalese researchers to be highly competitive, primarily because of imports. In fact, the five firms in our sample apparently close, go bankrupt, but eventually re-open with some regularity. Still, there appears to be little or no collusive behavior among these firms (surprising given the sector-wide negotiations on the primary input), again presumably because of the significant potential of imports.

Vinegar production in Senegal blossomed in the early 1990s as numerous small and medium enterprises (formal or not) entered the sector. Formal firms primarily deal with wholesalers while informal firms target retail sales. The structure of this market is interesting because of the apparent co-existence of both a very large food processor (second largest firm in

\textsuperscript{16} See the section on Madagascar for a fuller discussion of the expansionary options.
Senegal) that dominates the market and an unknown but very large number of small firms. Entry is extremely easy because production requires little capital and inputs that are easily accessible. On the other hand, the dominant firm is repeatedly accused of driving out smaller formal producers. They assert that their situation is untenable because of favoritism exhibited towards the dominant firm by the government and cost advantages enjoyed by their informal competitors. The primary input is acetic acid, produced by formal firms in sufficient quantities to meet all local demand. However, new regulations issued by government bar the use of acetic acid in vinegar, mandating instead the use of wine or spirits. This is likely to eliminate a great deal of informal production, to the extent that these new rules are enforced. As in the other sectors, financing remains the binding constraint on expansion of operations with no producer actually realizing any considered expansion.

In conclusion, two of the three markets studied can be characterized as having a government-supported dominant firm that acts as a price setter. Private firms in these sectors want the state monopolies dismantled and list privatization as a critical economic reform. Although Senegal has had a competition law on the books since 1994, few directors fully understood its purpose or were familiar with its provisions. Many, however, think breaking up monopolies (state-owned or otherwise) should be high on the enforcement agenda. Priority might be given, therefore, to consideration of whether state-sponsored dominant firms should be directly addressed through any revised competition law or some other means.

17 Perhaps these should be considered two distinct markets, one for independent news and one for “official” news.
4. A More Detailed Look at Madagascar

Introduction

This section reports on several findings derived from an enterprise survey undertaken by MADIO, in August and September of 1999. A sample of 150 firms, stratified by activity and size, was drawn by MADIO from a universe defined by the latest industrial census, which they had previously performed. The sample was also proportionally drawn geographically, among Antananarivo (the capital, 120 firms), Mahajanga (15 firms), and Toamasina (15 firms).

A. General Firm Characteristics

We begin with a table outlining several basic characteristics of the firms in our sample. These are largely expository and self-explanatory and require little commentary. A majority of firms in all size categories report profitable operations in 1998 overall and for their primary product (except for large firms employing between 201 and 1,000 employees). Median revenue growth between 1997 and 1998 was positive for all size firms, except small firms employing between 11 and 25 employees.

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18 The size categories used in the stratification were less than 10 employees, “small”, 10 to 100 employees, “medium”, and over 100 employees, “large”.
19 The sample size was established at 150, largely because of time and cost constraints.
In the remainder of this section, we rely on several classification variables to subdivide the sample into various categories and put our findings in some context. Implicitly, reporting results in this manner is an attempt to clarify the relationship between pairs of variables. Two cautionary notes should be registered here. First, formal statistical measures of association between pairs of variables are generally impossible to obtain for these results, given the small cell size for some categories of variable pairs. Nevertheless, it is possible to get a sense of

Table 1: General characteristics of firms in sample

<table>
<thead>
<tr>
<th>Firm Size</th>
<th>Number of Firms</th>
<th>Average Number of Employees</th>
<th>Average Number of Employees in 1996</th>
<th>% Growth in the Number of Employees since 1996</th>
<th>Total Revenues in 1997 ('000 MGF)</th>
<th>Total Revenues in 1998 ('000 MGF)</th>
<th>Median Revenue Growth Between 1997 and 1998</th>
<th>% of Capacity Firm Operates At With respect to All Products</th>
<th>% of Capacity Firm Operates At (with respect to primary product)</th>
<th>% of Firms That Are Profitable Net of Taxes With Respect To All Products</th>
<th>% of Firms That are Profitable Net of Taxes With Respect To Primary Product</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 or less</td>
<td>73</td>
<td>3.51</td>
<td>3.21</td>
<td>3.80%</td>
<td>119</td>
<td>127.6</td>
<td>4.50%</td>
<td>55.2</td>
<td>55.1</td>
<td>61.60%</td>
<td>50.70%</td>
</tr>
<tr>
<td>11 – 24</td>
<td>19</td>
<td>16.76</td>
<td>14.4</td>
<td>2.30%</td>
<td>247.3</td>
<td>298.4</td>
<td>-5.00%</td>
<td>60.9</td>
<td>58.3</td>
<td>90.50%</td>
<td>66.70%</td>
</tr>
<tr>
<td>25 - 100</td>
<td>24</td>
<td>63.46</td>
<td>53.95</td>
<td>26.30%</td>
<td>1146.6</td>
<td>1246.83</td>
<td>10.90%</td>
<td>69.7</td>
<td>72.6</td>
<td>75.00%</td>
<td>70.80%</td>
</tr>
<tr>
<td>101 - 200</td>
<td>16</td>
<td>137.94</td>
<td>128.27</td>
<td>13.70%</td>
<td>13141.2</td>
<td>14283.9</td>
<td>5.30%</td>
<td>65.9</td>
<td>68.4</td>
<td>68.80%</td>
<td>56.20%</td>
</tr>
<tr>
<td>201 - 1000</td>
<td>11</td>
<td>362.27</td>
<td>361.55</td>
<td>7.30%</td>
<td>14426.5</td>
<td>14608.2</td>
<td>16.70%</td>
<td>77.4</td>
<td>72.8</td>
<td>45.50%</td>
<td>36.40%</td>
</tr>
<tr>
<td>More than 1000</td>
<td>5</td>
<td>5112</td>
<td>5067.5</td>
<td>13.20%</td>
<td>125239.2</td>
<td>144161.6</td>
<td>9.20%</td>
<td>60.5</td>
<td>64</td>
<td>60.00%</td>
<td>60.00%</td>
</tr>
<tr>
<td>Sample</td>
<td>148</td>
<td>193.09</td>
<td>191.3</td>
<td>8.9%</td>
<td>8155</td>
<td>8749</td>
<td>4.15%</td>
<td>61.2</td>
<td>61.2</td>
<td>68</td>
<td>56</td>
</tr>
</tbody>
</table>

Mean and standard deviation (in parentheses)
potential relationships by seeking instances where reported values differ sizably from what might be expected given sample representations for the variables under consideration. Second, even if statistically reliable relationships were established, nothing could be inferred about causality between variable pairs or about the real strength of the association, given the presence of more than one pair of associations.

A fundamental classification variable in the analysis of enterprises is ownership structure, since this factor is often considered to drive firm behavior. Table 2 breaks out the three ownership categories identified in the survey to identify majority ownership, the classification variable we use later. Our sample is heavily weighted towards fully private domestic firms (more than two-thirds) although a considerable number of firms show majority ownership. Other classification variables that we use throughout the paper include for sectors: formal/informal nature of the sector, concentration, geographic market; and for the firm: age and profitability. A full set of descriptive results for all questions in the survey can be found in the MADIO report included as Appendix 5.

<table>
<thead>
<tr>
<th>Ownership</th>
<th>None</th>
<th>&gt; 50% and &lt; 100%</th>
<th>100%</th>
<th>Majority</th>
</tr>
</thead>
<tbody>
<tr>
<td>State</td>
<td>139</td>
<td>2</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Private Domestic</td>
<td>27</td>
<td>12</td>
<td>4</td>
<td>107</td>
</tr>
<tr>
<td>Foreign</td>
<td>117</td>
<td>5</td>
<td>5</td>
<td>23</td>
</tr>
</tbody>
</table>

B. Market Structure

Market structure is a critical element in much of the analysis related to competition policy and its application. Market structure, and much of competition law, turns on the definition of the relevant market, which in turn depends on products and geography. Defining the relevant market for any purpose is a complicated process that requires extensive data and detailed analysis.
of a firm or a market. In our analysis, we estimate and define the relevant market of participating firms by combining two survey variables: a five digit industrial code (assigned by coders on the basis of an open-ended question about the primary product of the enterprise) and the response to a question about the percentage distribution of sales among local, national, and export outlets.

The 150 survey firms’ primary products fall into 102 distinct five-digit product codes. Our sample includes primary products in 78 sectors in which there is only one producing firm in the sample and 15 additional sectors with only two producing firms in the sample. The remaining sectors range in coverage from three to eight firms. Firms were asked to report the percentage of their production sold locally, nationally, and exported and classified according to the dominant channel (66 percent, 14 percent, and 20 percent, respectively, for the entire sample). Slightly more than half of the firms in the survey distribute their products in more than one geographic market and 31 percent of firms claim some export activity. Combining product and geographic markets yields a total of 118 markets that can be analyzed as proxies for separate relevant markets.

These markets are, by most measures, fairly concentrated, although there is little directly comparable data for similar economies. Five firms report no direct competitors, while 34 percent report between one and ten. The remaining firms face a wide range of direct competitors, numbering from 11 to 1,000 (45 competitors is the median for this group). Approximately two thirds of firms responded with estimated market shares for the dominant firm in their market. Of these, three percent of markets were lead by firms with less than 10 percent market share, seven percent by firms with between 10 and 19 percent market share, 24 percent each by firms with

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20 Primary product is defined as the product making the greatest contribution to annual turnover. The five digit code
market shares between 20 and 29 percent and 30 and 39 percent. Thirty nine percent of firms reported operating in markets where the market leader had a 40 or more percentage share of the market.

To put concentration in Malagasy markets in perspective, we calculated approximate HHI indices for each of the 118 markets represented in the survey. The HHI is a measure of concentration that takes account of the distribution of market shares held by all the firms within a particular market. Given the market shares of the four leading firms and the number of firms in the market (both obtained from the survey), we assume that market shares are uniformly distributed among remaining firms not in the top four. Although this is an approximation of the actual HHI, this assumption does not lead to a bias in either direction, but, clearly, the more concentrated the market, the smaller the error in the estimate. After calculating the HHI for each relevant market (in cases where there are more than one firm in a relevant market, we use the mean for all firms in that market), we group markets (along FTC merger guidelines) into highly concentrated (HHI > 1800), concentrated (1000 < HHI < 1800), and unconcentrated (HHI < 1000). We need a second assumption for all firms whose primary geographic markets is exports and who do not report market share (as most do not), since we cannot estimate their global market share. Our assumption here is that exporting firms are in competitive markets and we arbitrarily assign an HHI of 500 for those firms.

As Table 3 indicates, the firms in our sample are approximately evenly divided among the markets.
three categories of market concentration but there are several significant deviations from the sample norms within geographic markets. For example, firms operating primarily in national markets tend to be in markets that are disproportionately highly concentrated, as are firms operating in the Mahajanga local market. Consistent with our assumption, export market firms operate largely in unconcentrated markets.

Understanding the dynamics of market structure and behavior in developing economies is complicated by the fact that many of the markets have both formal and informal sectors operating in parallel. This is certainly the case in Madagascar, since 85 percent of firms report that some market share in their primary market is held by the informal sector. In these markets, informal participants provide an average of 26 percent of products. For the 119 firms for which we can infer informal sector competition, approximately 34% of competitors are informal. Our HHI estimates include both formal and informal competitors. Limiting the index to formal firms would lead to significantly higher estimates in most relevant markets because there would be fewer firms among which to distribute market share but also because informal firms tend to hold

<table>
<thead>
<tr>
<th>Concentration</th>
<th>Antananarivo</th>
<th>Mahajanga</th>
<th>Toamasina</th>
<th>National</th>
<th>Export</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Low</strong></td>
<td>16</td>
<td>1</td>
<td>5</td>
<td>3</td>
<td>25</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>21.6%</td>
<td>9.1%</td>
<td>55.6%</td>
<td>15.0%</td>
<td>86.2%</td>
<td>35.0%</td>
</tr>
<tr>
<td><strong>Medium</strong></td>
<td>31</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>3</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td>41.9%</td>
<td>9.1%</td>
<td>11.1%</td>
<td>20.0%</td>
<td>10.3%</td>
<td>28.0%</td>
</tr>
<tr>
<td><strong>High</strong></td>
<td>27</td>
<td>9</td>
<td>3</td>
<td>13</td>
<td>1</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>36.5%</td>
<td>81.8%</td>
<td>33.3%</td>
<td>65.0%</td>
<td>3.5%</td>
<td>37.1%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>74</td>
<td>11</td>
<td>9</td>
<td>20</td>
<td>29</td>
<td>143</td>
</tr>
<tr>
<td></td>
<td>51.8%</td>
<td>7.7%</td>
<td>6.3%</td>
<td>14.0%</td>
<td>20.3%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>
Informal market participation by firms results from a variety of skewed incentives. Among the most often cited reasons for participation in the informal sector by any firm is the obvious – avoidance of taxes and other costs associated with formal sector operation. The single most important reason for the extension of formal firms into the informal sector, however, was the desire to respond effectively to intense competition from informal firms. Respondents generally believe that informal firms enjoy several cost advantages, primarily through tax and other regulatory evasions and lower salaries. Few believe that poorer product quality lies behind lower costs. Relatively few informal producers enter these parallel markets because they believe that entry costs as informal participants will be lower. Thus, one possible efficiency advantage of having a substantial informal economy, that lower entry costs promote strategic decisions by producers to “experiment” with entry into otherwise forbidding markets, does not appear to obtain.

C. Potentially Restrictive Business Practices

It is difficult to determine, a priori, whether practices that appear to restrain competition do in fact have adverse consequences on efficiency within the markets studied. Our survey investigated three categories of practices involving competitor behavior (“horizontal” arrangements), distribution practices (“vertical” arrangements), and abuses of dominant position (single firm, or “monopolistic” practices). In the first case, reported in Table 4, we deliberately

23 It is possible that excluding informal firms would lead to estimates of less concentrated relevant markets if some hold greater market shares than some of their formal competitors. Either way, this holds methodological implications for agencies conducting market studies in economies with substantial informal sectors, since the inclusion of data about the number and market shares of informal firms is necessary to accurately observe market dynamics and its proxies.
focused on coordinated behavior among firms rather than explicit agreements because, under Malagasy law, certain types of coordinated behavior among competing firms within an industry, usually through some sectoral association, are sometimes legal. We present nine possible coordinated business decisions, measured for the entire sample and then distributed by formal/informal, market concentration, and geographic nature of the primary market.

Table 4: Coordination of business decisions among competitors in the primary market
(Percentage of firms reporting at least one incident of stated behavior)

<table>
<thead>
<tr>
<th>Coordinated behavior</th>
<th>Formal/Informal</th>
<th>Concentration (HHI)</th>
<th>Primary Markets</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>All Firms</td>
<td>100% Formal</td>
<td>Mixed</td>
</tr>
<tr>
<td>products to be produced</td>
<td>11.5</td>
<td>6.9</td>
<td>3.8</td>
</tr>
<tr>
<td>marketing strategies</td>
<td>12.3</td>
<td>8.4</td>
<td>3.1</td>
</tr>
<tr>
<td>prices paid to suppliers</td>
<td>14.6</td>
<td>8.4</td>
<td>4.6</td>
</tr>
<tr>
<td>prices charged to customers</td>
<td>24.6</td>
<td>15.3</td>
<td>5.3</td>
</tr>
<tr>
<td>assignment of customers</td>
<td>7.8</td>
<td>3.1</td>
<td>2.3</td>
</tr>
<tr>
<td>bids for private or public tendering</td>
<td>8.5</td>
<td>6.1</td>
<td>2.3</td>
</tr>
<tr>
<td>sales territories</td>
<td>13.1</td>
<td>5.3</td>
<td>6.1</td>
</tr>
<tr>
<td>responding to competition from the informal sector</td>
<td>10</td>
<td>4.6</td>
<td>3.1</td>
</tr>
<tr>
<td>boycotting specific customers, suppliers, or competitors</td>
<td>11.5</td>
<td>5.3</td>
<td>3.8</td>
</tr>
</tbody>
</table>

Coordinated actions on prices is by far the most prevalent of the nine practices, being observed by almost one-quarter of responding firms and occurring nearly twice as often as other types of concerted actions. Not surprisingly, the incidence of all types of agreements was higher among formal sector firms, but “assignment of customers” and “boycott of specific customers,
suppliers, or competitors” occurs with disproportionately high frequency in the informal sector.24

In general, coordination is likely to be observed about twice as often by firms operating in concentrated sectors, with the exception of price agreements (both with respect to suppliers and consumers) and “marketing strategies” which appear much more prevalent in highly concentrated sectors. Agreements on products, assignment of customers, and sales territories are unexpectedly high in the local Antananarivo market. National primary markets are disproportionately high in agreements on public tendering bids and response to informal competition, but disproportionately low on assignment of customers. Surprisingly, export markets evidence low levels of observed agreements on “products to be produced” and “marketing strategies”. This is somewhat surprising since these two types of agreements are usually legal and often encouraged as part of a national strategy to promote exports.

Table 5 treats vertical restraints. There are relatively fewer observed instances than the horizontal coordination reported in the previous Table, but these are distributed much the same way along our classification groupings. Overall, resale price maintenance is nearly three times as likely to be observed, according to survey responses, than the other five practices listed. Exclusive dealing and exclusive distribution are much more prevalent in the purely formal sector markets. Once again, high concentration is positively correlated with the number of reported instances, with the exception of “specifying customers, sales territories, or sales locations”.

Although most instances of conduct with possibly adverse competitive consequences are reported in the Antananarivo local market, that market exhibits disproportionately low numbers of

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24 Sample sizes, when broken out into classifications, are too small to allow for formal tests of statistical significance. Therefore, we rely on simple deviations from expected values, given the sample distribution into the various classifications.
“specification of customer, sales, or territories” and “exclusive distributorship”.

Disproportionately high numbers of reports of resale price maintenance, exclusive dealings, and tying sales occur in the two other local markets, though this may be an artifact of the low number of responses. Finally, national markets evidence disproportionately high exclusive distributorships. It is often claimed that vertical practices should be given low priority by agencies in developing countries. Our data suggest that such advice would more probably have to be justified on grounds of ambiguous economic impacts and the inherent analytical complexity attached to vertical practices rather than their scarcity in developing economies.

We turn now to potential abuses of dominant position, meaning observations of practices taking place in markets in which at least one firm holds a 40 percent or greater market share, and reported in Table 6. It is not known in all cases whether the observed conduct is by the dominant firm and thus no inference about actual abuses can be drawn. Moreover, the proposed Malagasy Law on Competition does not specify a threshold to define dominance, relying instead on the

<table>
<thead>
<tr>
<th>Contractual Arrangements</th>
<th>Formal/Informal</th>
<th>Concentration (HHI)</th>
<th>Primary Markets</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Sample 100% Formal Mixed 100% Inform. Low Med. High Antananarivo Mahajanga Toamasina National Export</td>
<td></td>
<td></td>
</tr>
<tr>
<td>resale price maintenance</td>
<td>20.9 13.1 5.4 2.3 4.1 4.9 12.2 10.1 3.9 0.8 3.9 2.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>specifying customers, sales territories or sales locations</td>
<td>7.8 2.3 4.6 0.8 2.4 2.4 2.4 2.3 0.8 0 3.1 1.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exclusive distributorship</td>
<td>4.7 3.9 0 0 0.8 1.6 2.4 1.6 0 0 1.6 1.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exclusive dealing</td>
<td>3.1 3.1 0 0 0.8 0.8 1.6 1.6 0 0.8 0.8 0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tying sales</td>
<td>3.9 2.3 1.5 0 1.6 0 2.4 2.3 0 0.8 0 0.8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Licensing of intellectual property</td>
<td>5.4 3.1 2.3 0 1.6 1.6 2.4 3.9 0 0 0 1.6</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
rather circular definition that dominance obtains when a firm or firms can direct, i.e. dominate, others.\footnote{25}

The most prevalent observed practice is “receiving special treatment from the government”, reported in 62 percent of markets. Exclusive dealing and tying sales were also identified in approximately half of the markets; the first is not explicitly addressed in the law.\footnote{26}

Refusal to deal was the least common observed practice, identified in only ten percent of

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\footnote{25} The law we refer to in this paper is the latest draft law, undated but obtained in August 2000, and being discussed in the Cabinet of Ministers at the time of this writing.  
\footnote{26} The law defines only a few specific abuses of dominant position (price fixing, discrimination, and mergers), but also allows application against any behavior, horizontal or vertical, intending to achieve control over a market.
markets. Fewer potential abuses occur in Antananarivo, whereas a disproportionately large number were reported in Mahajanga in exclusive dealing, tying sales, and state aid. On national markets, disproportionately high observations were reported in predatory pricing, suppression of innovation, and receiving favorable terms from suppliers. The first is covered by the law, but the latter two are open to interpretation and could be quite legitimate business practices.

The discussion above provides a sense of the occurrence of specific practices across primary markets and by market concentration. A different perspective on the problem can be gained by examining the prevalence of potential violations within primary markets, irrespective of the type of violation. This exercise might be useful for a competition agency seeking to identify problem sectors for further research as it is setting its enforcement priorities. We follow the previous behavior categories of agreements, vertical practices, and potential abuses of dominant position.

Fifty-nine firms report a total of 148 observed agreements, but thirteen primary markets account for 43 percent of the total observations. Forty-four firms report observing a total of 59 vertical practices with 13 primary markets again accounting for 47 percent of observations. Finally, 33 firms report observing 110 potential abuses of dominant position; here, 13 primary markets account for 66 percent of these observations. It is worth noting that the high concentration of reported observations is quite dispersed across markets, i.e. there is little overlap between high levels of violations in different categories of potential infractions. In all, 33 primary markets account for the high percentages reported above and only five primary markets evidence high concentrations of two categories of practices. These are cooking oil manufacture, advertising, shoe manufacture, furniture manufacture, and rice processing; all are Antananarivo
local markets. None shows high levels of occurrences in all three practices.

Table 7 highlights observed practices by our standard classification variables of concentration and primary markets. We observe the expected positive relationship between market concentration and frequency of multiple potential violations. With respect to geographic markets, Antananarivo shows disproportionately high numbers of sectors with high multiple potential infractions.

D. **Entry and Exit Behavior**

A dynamic and efficient productive sector depends in large part on the relative ease of entry of new producers looking to capture economic profits and the exit of inefficient producers. Restrictive practices are often directed at limiting competition by raising entry costs, either
through direct action of the offending firm or by appeal to exclusive licenses. The firms in our sample report a certain amount of turnover in their sector. Fifty-eight percent of respondents report new entry into their primary markets within the last two years while 34% of firms report exits within the last two years. But these numbers do not provide a sense of the magnitude of the phenomenon. To better understand entry behavior, we asked whether firms considered each of five expansionary behaviors in the last two years and whether they realized their plans. The set of behaviors covered exhausts possibilities by considering upstream and downstream vertical expansion (new production of inputs or new distribution of products), horizontal expansion (current product capacity increases or totally new markets), and mergers.

Table 8 reports the responses to these questions. Row 1 lists the percentage of firms considering the behavior in the last two years while Row 2 lists the percentage of those firms that actually undertook the expansion during the past two years. Row 3 is the product of Rows 1 and 2, and therefore reports the percentage of firms from the whole sample undertaking the behavior. The remaining columns report the number of firms undertaking each behavior, classified by age of the firm, profitability, majority ownership, sector concentration, and primary geographic market. Eighty four percent of firms considered at least one of the expansionary behaviors and 44 percent realized at least one plan.

Expansion of current production was most often considered and realized but relatively few firms considered upstream integration and fewer yet considered mergers. The virtual absence of merger activity among our sample firms is noteworthy given that the draft law contemplates a full set of merger provisions that includes a pre-merger notification requirement, regardless of size. Annual turnover for our merger firms ranges from 200,000 to 6.5 million MGF, indicating
that these are fairly small firms that would probably not trigger an investigation in the presence of any reasonable threshold. This suggests that scarce agency resources might better be devoted to the investigation and enforcement of possibly anti-competitive conduct, and that formal merger controls not be implemented until a later stage of the agency’s and the economy’s development.

Table 8: Types of firms considering and undertaking expansionary behavior

<table>
<thead>
<tr>
<th>Expansionary Behaviors</th>
<th>New production of inputs</th>
<th>New distribution of outputs</th>
<th>Expand current production</th>
<th>Enter new markets</th>
<th>Merge</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>% of firms considering action</td>
<td>27.30%</td>
<td>50%</td>
<td>55.30%</td>
<td>40.70%</td>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>% of firms undertaking action (of eligible)</td>
<td>36.60%</td>
<td>40%</td>
<td>51.80%</td>
<td>29.50%</td>
<td>33.30%</td>
<td></td>
</tr>
<tr>
<td>% of firms undertaking action (of sample)</td>
<td>10%</td>
<td>20%</td>
<td>29%</td>
<td>12%</td>
<td>3%</td>
<td></td>
</tr>
<tr>
<td>No. of firms</td>
<td>15</td>
<td>30</td>
<td>43</td>
<td>17</td>
<td>5</td>
<td>110</td>
</tr>
<tr>
<td>Age of firm (yrs)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0 - 10</td>
<td>7</td>
<td>16</td>
<td>28</td>
<td>10</td>
<td>4</td>
<td>65</td>
</tr>
<tr>
<td>11 - 25</td>
<td>7</td>
<td>9</td>
<td>8</td>
<td>5</td>
<td>1</td>
<td>30</td>
</tr>
<tr>
<td>&gt; 25</td>
<td>1</td>
<td>5</td>
<td>7</td>
<td>2</td>
<td>0</td>
<td>15</td>
</tr>
<tr>
<td>Profitability</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NO</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>2</td>
<td>20</td>
</tr>
<tr>
<td>YES</td>
<td>12</td>
<td>24</td>
<td>37</td>
<td>11</td>
<td>3</td>
<td>87</td>
</tr>
<tr>
<td>Ownership Majority</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>2</td>
<td>1</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>Priv. Domestic</td>
<td>10</td>
<td>22</td>
<td>23</td>
<td>14</td>
<td>3</td>
<td>72</td>
</tr>
<tr>
<td>Foreign</td>
<td>3</td>
<td>7</td>
<td>15</td>
<td>4</td>
<td>2</td>
<td>31</td>
</tr>
<tr>
<td>Market Concentration</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>7</td>
<td>7</td>
<td>16</td>
<td>6</td>
<td>2</td>
<td>38</td>
</tr>
<tr>
<td>Medium</td>
<td>1</td>
<td>6</td>
<td>6</td>
<td>3</td>
<td>0</td>
<td>16</td>
</tr>
<tr>
<td>High</td>
<td>7</td>
<td>15</td>
<td>18</td>
<td>8</td>
<td>3</td>
<td>51</td>
</tr>
<tr>
<td>Geographic Market</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Antananarivo</td>
<td>7</td>
<td>17</td>
<td>18</td>
<td>8</td>
<td>2</td>
<td>52</td>
</tr>
<tr>
<td>Mahajanga</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Toamasina</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>4</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>National</td>
<td>3</td>
<td>8</td>
<td>7</td>
<td>3</td>
<td>2</td>
<td>23</td>
</tr>
<tr>
<td>Export</td>
<td>4</td>
<td>5</td>
<td>14</td>
<td>2</td>
<td>1</td>
<td>26</td>
</tr>
</tbody>
</table>
Turning to expansionary behavior by our classification variables, we observe some sizable deviations from expected values, given sample representation. Firms in existence between 11 and 25 years appear generally more likely to engage in expansionary behavior, especially with respect to vertical expansions in both directions. Profitable firms also engage in expansionary behavior at higher rates than expected, particularly in expanding capacity. Ownership structure is another potential explanatory factor for firm expansion, since we observe that majority foreign owned firms undertook proportionately more expansions, again especially in expanding current production. Concurrently, majority privately owned domestic firms show a large negative deviation from expected values. Highly concentrated sectors show disproportionately high activity matched by the opposite in sectors of medium concentration. This activity is fairly evenly distributed among the five behaviors although it is slightly more likely to occur in the distribution of outputs. Finally, national and export markets exhibit higher than expected activity in distribution for national market firms and expansion of current production for export market firms.

One significant constraint on expansionary behavior is availability of capital. Few firms seem to have access to sufficient capital for long-term investment and the vast majority that do plan to rely on their own capital. Fifty percent of firms have no long-range investment plans. Of those that do, a full 82 percent will rely on retained earnings and their own funds to finance their investment plans. Only eight percent will finance their investments through the formal banking sector and an additional seven percent will rely on informal loans from family and friends.

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27 This is, of course, not surprising given financing constraints.
28 It is important to note that these associations reflect simple bivariate correlations from which it is impossible to infer causality with any certainty. Nevertheless, they are indicative of factors which might explain conditions that
A second constraint to expansion is management expertise. Although slightly less than half of firms sought advice on their expansion plans, the most popular source of advice was family and friends, a potentially dubious source of management knowledge though consistent with their role as financiers. Banks are the second most popular source of advice, followed by private consultants and industry or sectoral associations.

E. Other Findings

The survey raised a number of other questions addressing specific topics (discussed in general terms earlier in this report). In this final section, we briefly highlight some additional findings and invite the reader to refer to the MADIO Appendix for a more thorough discussion of each question.

Many questions in the survey relate to the general environment that the respondent firms operate in and to the role and effectiveness of economic policies and laws at promoting private sector development. Given a list of twelve possible factors affecting the welfare of their firms (Question 29), respondents identified corruption (63 percent) and competition from imports (37 percent) and domestic products (36 percent) as having the largest negative impact on their firms. Conversely, 61 percent of firms identified strong market demand conditions and easy access to inputs (49 percent) as favorably affecting their firm.

When asked to compare political, economic, and judicial stability, many more respondents deemed judicial performance as most comparatively unstable (69 percent), but few thought any of the three particularly stable (14 percent, 3 percent, and 4 percent, respectively).
There was less of a consensus on which economic reforms (from a list of eleven) were more important for private sector development. Few respondents thought commercial code reforms were unimportant (12 percent) but the most often identified “high importance” reform was, somewhat surprisingly, the harmonization of commercial laws with other Francophone countries (59 percent), followed by judicial reform (43 percent). Competition law, interestingly enough, was the second-least likely reform to rate as a “high importance” reform (29 percent), suggesting that in-country sentiment is consistent with one of the Study’s principal hypotheses.

Conclusions from the Madagascar Survey

- The survey elicited reports of a wide range of horizontal and vertical practices, private and public, some of which might warrant further study. Horizontal practices were significantly more prevalent than vertical ones (with the exception of resale price maintenance), and among the horizontal practices reported there was a significant incidence of potentially anti-competitive practices. This supports the hypothesis that a gradualist approach to enforcement is valid with an early focus on certain competitor behavior, because of their preponderance, their “per se” treatment in the draft law, and their relatively lighter investigative resource burden. Many illegal agreements stem from historical practices and ambiguous or contradictory roles for producers’ associations. Such agreements could perhaps be largely mitigated through an educational program promoting voluntary compliance.

- The survey, however, identified little, if any, merger activity, considered, initiated, or consummated. Moreover, the few merger cases reported involved relatively small firms. Thus the full set of merger provisions contemplated in the draft law appear unnecessary at this
time. At the very least, they ought to be tightened so that only large mergers where the new entity will clearly dominate the market should require notification. There is a real danger that merger reviews (as currently contemplated in the law), even if infrequent, will divert precious resources of the agency from more productive uses.

- There is a clear role for an advocacy program for the competition agency within the government, given the lack of confidence in basic government institutions and the cozy relationship between many dominant firms and the bureaucracies that either own them or continue to grant them special treatment.

- Markets with a relatively high degree of informal activity appear to be fairly dynamic with respect to entry and exit. More formal entry and exit is severely constrained by a lack of capital and credit markets. Expanding access to capital or credit is not traditionally a competition agency function but an early focus on promoting competition in financial sectors could yield substantial benefits to the economy through more efficient credit markets.

Informal markets present competitive problems for obvious reasons having to do with largely illegal cost advantages unevenly distributed among competitors. Moreover, informal markets only infrequently appear to be a way for expanding firms to take advantage of lower entry barriers to test out new markets, which could conceivably have long-term positive impacts on competition. More often, there seems to be a self-reinforcing “race to the bottom” as formal competitors are pressured by cost disadvantages to channel at least part of their production through parallel informal markets.

As an early study and enforcement priority, therefore, a Malagasy competition agency
could seriously consider as a strategy the simultaneous advocacy of “formalization” of targeted informal areas of the economy to eliminate unfair cost advantages in sectors where there are no entry-promotion benefits from having parallel informal markets, and “de-formalization” (deregulation) of formal sectors where the formal/informal sector cost gap is greatest due to government imposed regulation. Advocating this kind of “convergence” strategy for closing the gap between the formal and informal sectors is not a traditional role for a competition agency and the current draft law, largely silent on this issue, does not provide much in the way of authority or enforcement tools for the new agency to undertake such a strategy effectively. If the strategy were to prove of interest, therefore, some re-consideration of the proposed law might be in order.

5. **Conclusions and Policy Issues**

Our research in Benin, Madagascar, and Senegal yielded useful information about the economic environment and impediments to competition. Our team sought to supplement traditional research methods (e.g., performing desk studies and conducting interviews) by using surveys to determine the views of business operators. Our surveys yielded robust results in only one country (Madagascar). We would have greater confidence in our conclusions had we been able to enhance our case studies of the competitive environment in Benin and Senegal with survey data of the type we obtained in Madagascar. Nonetheless, our research in all three countries and our survey results in Madagascar together support some preliminary conclusions about (1) the choice of research methodologies, (2) the validity of our initial hypotheses concerning the role of competition policy in emerging market economies, and (3) the future design of EAGER-type projects. We consider each of these conclusions below.
A. Methodology

Our initial choice of research methodologies sought to achieve two goals. In terms of substance, we wanted to select research tools that would provide an accurate measure of the obstacles to competition in each country and to facilitate comparisons across all three nations. This aim strongly motivated the creation of a common survey questionnaire that could be administered to business operators in Benin, Madagascar, and Senegal. In terms of process, we attempted to identify methodologies that would help build local institutions by augmenting the analytical capabilities of indigenous scholars and research bodies and by developing data sets that government bodies could use to formulate future policies. To this end, we collaborated with local researchers and attempted to identify public institutions that might apply our survey results in making future decisions about the design and implementation of competition policy.

Although we encountered various incompatibilities in applying the survey and performing case studies that preclude rigorous comparisons across all three countries, we believe that the research methods we used, as refined in the light of experience on this project, could provide valuable tools for similar projects in the future. The Madagascar survey elicited useful information about possible anticompetitive conduct in certain sectors. Most immediately, our survey data could help inform judgments about setting priorities for a new competition authority in Madagascar. More generally, new competition authorities in Benin and Madagascar (or the existing competition body in Senegal) could use the survey methodology to conduct future assessments of the competitive environment. Future surveys could help pinpoint public impediments to rivalry and identify episodes of suspicious private behavior that might warrant closer investigation. Particularly in the early stages of its development, a competition authority
could use the survey – or variants of the survey – to build analytical expertise and accumulate knowledge about specific sectors.

Specific Recommendation. Our experiences in Benin, Madagascar, and Senegal demonstrated the feasibility of using surveys to increase understanding of the competitive environment and develop analytical capability in the host country. We propose that the survey instrument be made freely available for use on other projects and be applied through a collaboration of external advisors and local researchers. We also recommend the investment of additional effort in refining the survey instrument to incorporate lessons from our experiences in the three countries examined for this project.

B. Validity of the Study Hypotheses

Significant evidence from our research in Benin, Madagascar, and Senegal confirmed the view that poor physical infrastructures (e.g., inadequate telecommunications, roads, port facilities, and access to public utilities,) and inadequate economic and legal institutions seriously inhibit the development of private markets. Weaknesses in these essential foundations for effective market processes retard economic growth by, among other effects, obstructing entry by new firms and expansion by existing enterprises.

Our research did not find evidence that the adoption of elaborate, Western-style competition policy regimes in the early stages of the transition from central planning to markets – an approach sometimes mandated and often strongly encouraged by donor bodies – would make a useful contribution toward alleviating the conditions described above. We saw no evidence that a comprehensive Western-style competition law, often oriented toward the execution of
ambitious law enforcement programs, was necessary or could be effectively implemented in even moderate stages of transition and development.

Our research highlights possible paths for developing a more sensible conception of the content and role of competition policy in the early phases of transition and development. A great deal of the commentary on economic legal reforms in transition economies tends to equate “competition policy” with the enactment and enforcement of antitrust prohibitions on business conduct that restrains trade. Our research suggests the importance of expanding the concept of competition policy to embrace a broader collection of policy tools and activities that the traditional orientation towards law enforcement slights. As indicated in our studies in Benin, Madagascar, and Senegal, sound “competition policy” might consist of building better roads and accomplishing other improvements in the physical infrastructure; reducing high marginal rates and onerous licensing restrictions that divert prospective entrepreneurs from the formal sector and channel them into the informal sector; and improving the clarity, predictability, and enforcement of contract principles.

The formulation and operation of new competition policy institutions in Benin and Madagascar, and the revitalization of Senegal’s existing competition authority, might best emphasize the pursuit of a broad collection of policies other than traditional Western antitrust enforcement. A fuller, proper conception of competition policy would dictate focusing on measures to create the initial conditions – such as the elimination of artificial government barriers to entry – that may prove to be more important to economic growth than focusing chiefly on identifying and proscribing trade restraints imposed by private actors. The proper choice and phasing of competition policy reforms is likely to accord less initial priority to traditional law
enforcement and to give more attention to institution building, industrial organization analysis, public education, and competition advocacy than many technical assistance projects have proposed in the past.

Specific Recommendation. Full-blown, Western-style competition regimes are unlikely to serve the best interests of countries in the early or even middle stages of transition. The establishment and implementation of competition policy commands should take place in measured stages appropriate to each country’s state of development. Nominal legal commands should be matched with capabilities. Competition policy in the early stages of transition should focus upon entry-facilitating strategies that extend well beyond the enforcement of prohibitions against restrictive business practices. The creation and implementation of targeted competition policy commands may be appropriate for specific sectors, such as industries undergoing privatization and deregulation, where incumbent dominant firms have especially strong capacity to impede entry and expansion by rival companies.

C. Implications for Future Eager-Type Projects.

As suggested above, an important objective of our project was to assist in institution-building by collaborating with local researchers who would assist in conducting the survey and other analytical tasks. The identification of appropriate local partners and the management of collaborative research undertakings proved to be harder than we had expected. Difficulties associated with finding suitable indigenous counterparts and managing the projects from afar (with the exception of a small number of in-country visits) compromised the effectiveness of our survey activities and reduced the amount of useful data we could acquire.
In all three countries we studied, the pool of indigenous industrial organization, competition policy, or regulatory expertise is modest. The most capable researchers often find themselves in great demand by donor agencies, by donor-funded projects, by government bureaus, or by the few private sector entities that can afford to retain them. One faces the choice of either taking a place in a very crowded queue that leads to the researcher, or in choosing a less experienced partner and working closely with the partner to build analytical capability. Either strategy is likely to prove costly and time-consuming. EAGER-style projects have genuine potential to help develop indigenous analytical capacity, but applying the projects toward this objective requires a substantial commitment of effort.

Specific Recommendation. Future EAGER-type projects should establish working offices in the capitals of participating countries in order to (a) facilitate sustained relationships with in-country collaborators, (b) supply logistical support for visiting U.S. teams and to in-country collaborators, and (c) provide a more concrete presence for purposes of institution-building and continuing research. The budgeting of future EAGER-type projects also should account realistically for the substantial costs associated with in-country visits by external researchers and with securing capable collaborators. Some of these costs for individual research projects might be reduced by having EAGER-like initiatives establish an in-country presence, as suggested above.
Appendices

1. List of Interviewees, Benin, Madagascar & Senegal
2. Survey Instrument as used in Madagascar (in French)
3. Report from Benin (in French)
4. Report from Senegal (in French)
5. Report from Madagascar (in French)
6. Report from Madagascar (English translation)
7. Draft Malagasy Competition Law (English translation)