

Competition as a Guiding Principle in the Adoption of Measures for Economic Recovery During, and Post-Covid 19

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Contents

- Background
- Introduction to Competition
- Types of Competition
- Competition Law vis-à-vis Competition Policy
- The Nine Principles of Competition Policy
- What Next?
- End



Background

- Competition plays an essential function in ensuring a **well-functioning market** that can drive economic recovery and growth especially after the Covid-19 pandemic and beyond.
- However, the economic fall-out from the pandemic has heightened concerns about limited competition and its potential consequences for economic growth.
- This presentation will therefore look at some of the principles of competition policy that are currently being employed to enhanced economic growth during, and post-pandemic periods?

What is competition?

Competition

Literary meaning: a **contestable situation** where people fight for superiority.

In market economy, competition is a process whereby firms fight against each other for securing consumers for their products

Why Competition?

- Competition is an essential condition for national competitiveness.
- Empirical studies/evidence from several countries testify to the benefits of competition.
 - Promotes allocative and productive efficiencies
 - Foster innovation
 - Enhances consumer welfare
 - Economic growth and development
 - Helps to uphold political democracy.

Fair and Unfair Competition

Fair Competition	Unfair Competition
<ul style="list-style-type: none">■ Producing quality goods■ Becoming cost-efficient■ Optimizing the use of resources■ Adopting the best available technology■ Investing in research and development, etc.	<ul style="list-style-type: none">■ Fixing prices with the rivals■ Setting a price which is lower than cost in order to throw out competitors from the market■ Advertising that belittles others' product, etc.



Types of competition

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graph TD; A[Types of competition] --> B[Price Competition]; A --> C[Non-price Competition]; B --> D[Competition among suppliers to win customers by offering lower price. May not be an appropriate strategy for those loyal to a particular brand.]; C --> E[Competition to win customers not by lowering price but by advertising, offering after-sales-service, using sales-promotion tools, etc.];
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Price Competition

Competition among suppliers to win customers **by offering lower price.** May not be an appropriate strategy for those loyal to a particular brand.

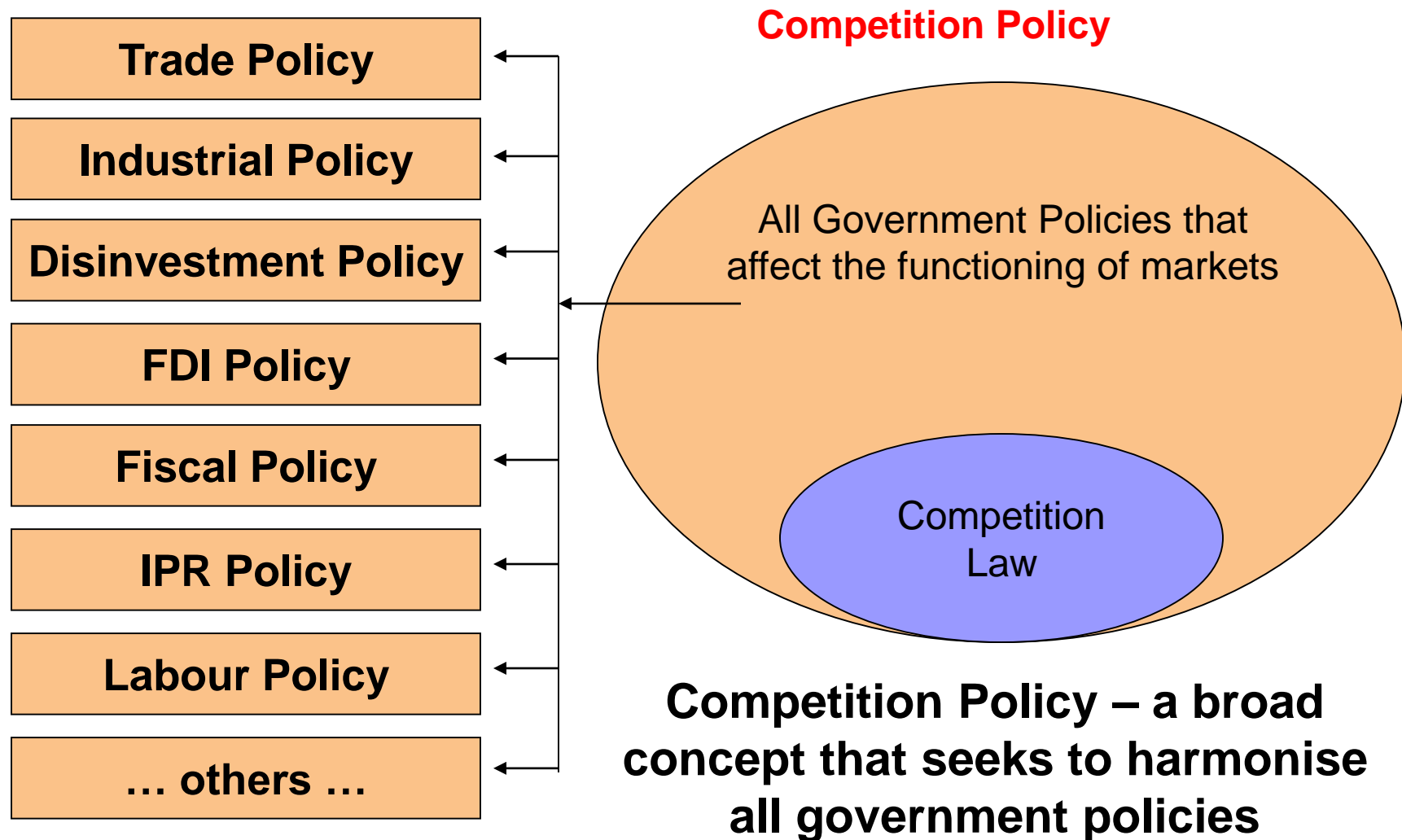
Non-price Competition

Competition to win customers not by lowering price but **by advertising, offering after-sales-service, using sales-promotion tools, etc.**

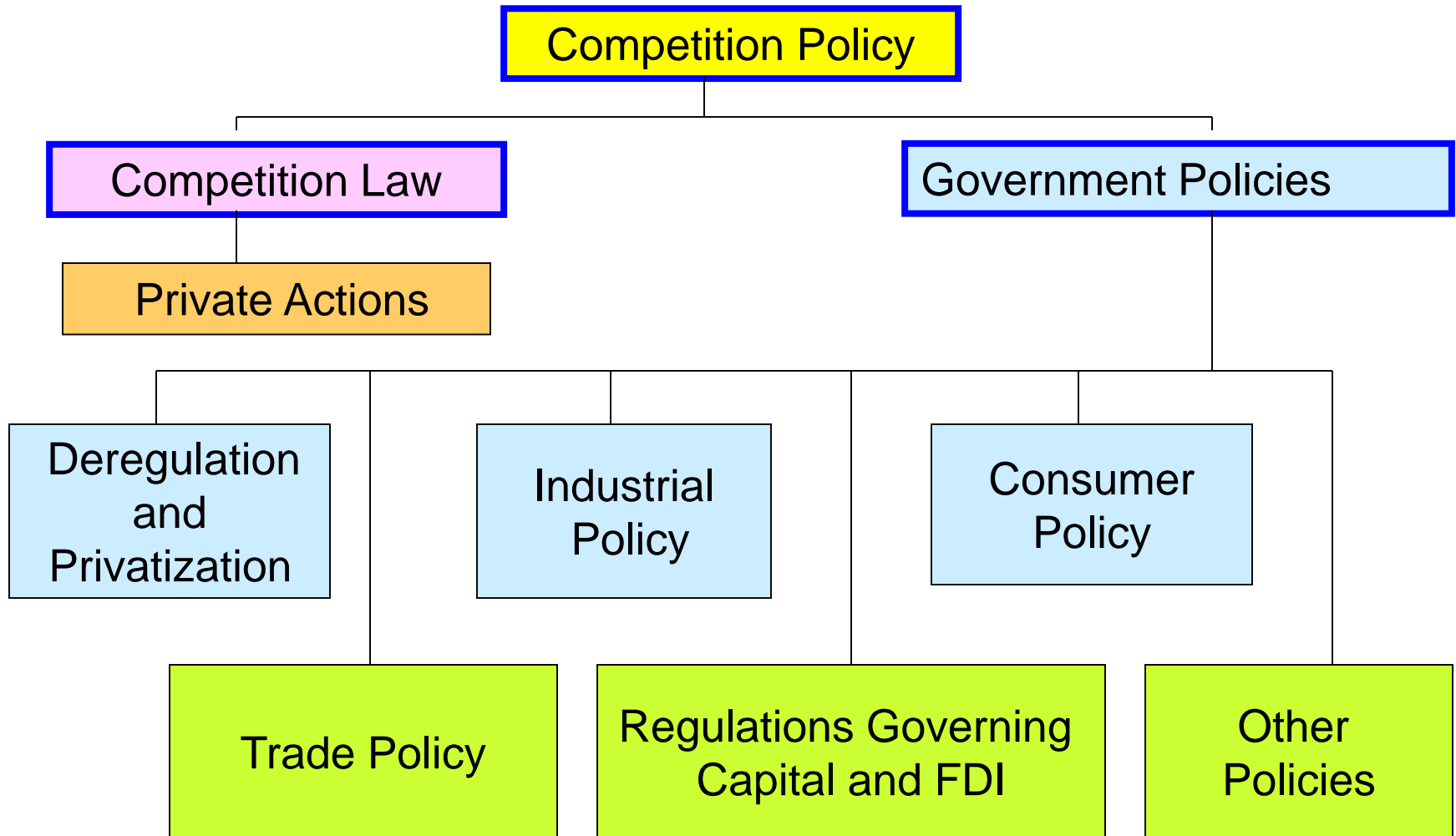
Competition Policy /Law

- ❖ **Competition policy** => **policy options/government measures** aimed at promoting healthy competition in the market place. It affects both **Firm Behavior** and **Industrial structure**.
- ❖ A competition policy should include both
 - ❖ **Economic policies** adopted by Government, that enhance competition in local and national markets, and,
 - ❖ **Competition law** designed to stop **anti-competitive business practices**.
- ❖ **Competition Law** is the **legislated expression** of those competition policy choices that a government has adopted.
- ❖ **Competition policy and law and can take different forms for different countries.**

Competition Policy vis-a-vis Competition Law



Components of competition policy



Competition Law (National)

Anti-Competitive Agreements Between Firms (Collusion)

- Import cartels
- Price fixing
- Market sharing
- Bid rigging
- Limiting production
- Refusal to buy or supply
- Tie-in arrangements
- Exclusive-dealing
- Resale price maintenance
- Territorial allocation

Abuse of a Dominant Market Position

- Predatory pricing
- Price discrimination
- Excessive pricing
- Abuse of intellectual property monopoly

Regulation of Mergers to Prevent Tactics to Gain Excessive Dominance in a Market

Applies to:

- Total unification of the companies involved
- Buying of sufficient shares in a company so as to have a say in policy formulation

Benefits of Competition Policy:

Excerpts from Select Studies

- “Competition Policy led to large price reductions, innovations, and product development” - - *The Benefits from Competition: Some illustrative UK Cases, University of East Anglia, May 2004*
- “Ensuring fair competition in the market is an essential ingredient for enhancement and maintenance of competitiveness in the economy” - - *EU White Paper on Competitiveness, 1994*
- “Strong competition policy is not just a luxury to be enjoyed by rich countries, but a real necessity for those striving to create democratic market economies” - - *Joseph Stiglitz, Project Syndicate, August 2001*

Competition Law

The **three stages of provisions** that a competition law constitutes are:

- The **behavior and structure of firms** in the market
- **Institutional and enforcement** design with a competition authority, and
- **Competition advocacy.**



Competition Principles

- Competition principles interface with policies relating to: disinvestment, concessions, industrial/sector policies, subsidies, international agreements, policies, subsidies, international agreements, entry/exit policies, etc.
- The following section looks at the existing principles of competition policy that can be employed for economic growth during, and post-pandemic period?



Nine Principles of Competition Policy

1. Foster competitive neutrality
2. Ensure access to essential goods, services and facilities
3. Free movement of goods, services, and capital
4. Separate policy-making, regulation and operation functions
5. Ensure free and fair market process
6. Balance Competition and IPRs
7. Notification and public justification for deviation from competition principles
8. Ensure transparent, predictable and participatory regulatory environment.
9. Respect for international obligations

Principle 1

Fostering Competitive Neutrality

- **State support during and post-Covid-19** should be based on objective criteria, and apply to all businesses in an industry to maintain a level playing field.
 - In Kenya, **Government support measures** did not do much to help SMEs weather the crisis or reduce failure rates. Consequently, the country is witnessing mass-insolvency and failure rates in this sector.
- There's need for **measures to lower trade costs and entry barriers** in order to promote entrepreneurship and growth of MSMEs.
 - Review of taxation/fiscal policy and licenses
 - The Kenyan Competition (General) Rules, 2019, reduced the merger filing fees for SMEs

Principle 2

Ensuring Access to Essential Goods & Facilities

- Following the confirmation of the first COVID-19 case in Kenya, a number of manufacturers and retailers increased prices (and/or hoarding with the intention of increasing prices) of various essential goods.
 - The Competition Authority of Kenya issued a Cautionary Notice against manufacturers and retailers against collusive increase of prices and/or hoarding.
 - On 16th March 2020, CAK issued a remedial order against a local supermarket retailer after it was established that the retailer had unconscionably raised the prices of Tropikal brand hand sanitizers.

Principle 3

Free Movement of Goods, Services, & Capital

- Support regional integration measures as a step towards an African single market.
 - AfCFTA will unlock massive opportunities for Kenya's private sector growth and development through intra-African trade.
 - The trade area could have a combined gross domestic product of around \$3.4 trillion
- Success relies on the ability to proceed with reform in the face of opposition from powerful lobby groups who benefit from the status quo.
 - Multi-stakeholder approach is necessary but has risks

Principle 4

Separate policy-making, regulation and operation functions

- **Clear institutional arrangements** delineating the roles of **government policy makers** vis-a-vis **independent regulators**.
 - Evidence shows the benefits of “shrinking the state”
- **Operational independence** of regulators is key but needs to be aligned with the **“whole-of-government”** approach of policy-making.
 - **Regulatory bridge among Financial Sector Regulators** in Kenya allows them to coordinate Fintech regulation and share information on emerging policy issues.

Principle 5

Ensure free and fair market process

- **Liberalisation and deregulation of strategic sectors** that are still government controlled e.g. energy and transport.
 - **Reduce the role of the government** in (parts of) the energy sector where the government is not only a producer and regulator, but also exerts direct control over the output.
 - Privatize Kenya Power and Kenya Pipeline
 - Allow/encourage new entrants to compete with incumbents
 - **Diverting subsidies** away from money-losing state enterprises
 - Should govt continue subsidizing Kenya Airways, Kenya Railways, etc.
- **Concentrated markets** which tend to inhibit new entrants, limit investment and employment, and stifle innovation.
 - It can also have a negative impact on **viable competitive process** and **the enhancement of welfare**.

Principle 6

Balance Competition and IPRs

- Intellectual property is given high priority in Kenya.
 - Four Types of Intellectual Properties: Copyrights, Patents, Trademarks, and Trade Secrets
- **Section 40(5) of Kenya's 2010 Constitution** obliges the government, among other things, to protect and enforce Kenyans' IP rights.
 - Protect IPRs by enforcing laws to deal with the rampant abuse of IPRs.
- Competition encourages innovation.
 - Kenyan companies must invest in research and innovation in order to remain competitive at national, regional and global levels.

Principle 7

Notification and Public Justification for Deviation from Competition Principles

- The Government has injected significant public funds to bail out state-owned corporations **e.g. KQ.**
- How should competition authority handle **government measures to support firm recovery** post-Covid-19 which may not be the most efficient allocation and utilization of resources?
 - **Industrial Policy vis-à-vis Competition Policy**
- Competition authority can play an important role in informing **government's exit strategies** to ensure that exiting from **ongoing support measures** is done in a way that promotes competition.

Principle 8

Ensure Transparent, Predictable and Participatory Regulatory Environment

- Competition advocacy
 - The promotion of competition principles in policy discussions and regulatory processes, but also when addressing market players and other stakeholders.
- Stakeholder involvement in policy making.
 - Open house discussions, consultation forums, roundtables, etc.
 - **Kenyan Competition (General) Rules, 2019**, developed through stakeholder participation,
- Make decisions public.
 - In Kenya, the CAK publishes all its determinations on the **Kenya Gazette and its Website**, clearly highlighting the reasoning behind the final decision.

Principle 9

Respect for International Obligations

- Competition is not exclusively a **national affair**
 - Cooperation between national and multi-national competition authorities is key post-Covid
 - African Competition Forum (ACF), International Competition Network (ICN), OECD, etc.
 - **Enforcement co-operation** to control international unfair competition and restrictive business practices
 - International/cross-border cartels
 - Protection of Intellectual Property Rights
- **Consumer Protection**
 - Establish a **strong consumer protection body** anchored in law
 - Work with civil society groups on advocacy

What Next?

- As the economy starts to recover from the COVID-19 crisis, it will be important to ensure that **a competitive and inclusive business environment** is in place that supports the **reallocation of resources** from less productive (**public???**) to more productive firms (**SMEs????**).
- **Concentration and the dominance of large firms may increase**, potentially further limiting competition, just when it is most needed to promote recovery.
- **Improve the institutional framework and enforcement of anti-trust laws** for a strong competition environment.



The End

Thank you for your attention.