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COMPETITION ISSUES IN TELEVISION AND BROADCASTING

Contribution from Congo

-- Session II --

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COMPETITION ISSUES IN TELEVISION AND BROADCASTING

-- Congo* --

1. General background to competition

1. In 1990, after 30 years of centrally planned economy, the Republic of Congo made a firm commitment to apply market economy rules. A legislative regime to that effect was introduced through the enactment of Law 6-94 of 1 June 1994 on price regulation, trading standards and fraud detection and prevention. This Law also succinctly provides, *inter alia*, for market transparency and anti-competitive practices.

2. Under Decree 2010-40 of 28 January 2010, the Congolese government set up a body tasked with overseeing competition and combating commercial fraud. This is a technical body which assists the Ministry of Trade and Procurement in this area and thereby supports the Congolese government's commitment to national competition policy.

3. Moreover, with the assistance of UNCTAD and support from the European Union through the Commercial and Entrepreneurial Capacity-Building Project (PRCCE), the Ministry of Trade and Procurement has drawn up two draft bills, one on competition and the other on consumer protection, which have been submitted to national institutions for review. The draft bill on *competition* provides for creation of a "National Competition Authority", and the second for creation of a "National Consumer Protection Board".

4. Under this legislation the National Competition Authority will be a decision-making body, while the National Consumer Protection Board will be an advisory body. The National Competition Authority will work in collaboration with the General Directorate of Competition and Fraud Prevention, as well as with sectoral competition regulation agencies.

5. Despite the lack of a framework law on competition, there are nonetheless competition regulation agencies in the telecommunication, energy, public procurement and oil services sectors.

2. Competition in the television and broadcasting sector

6. Competition issues relating to the television and broadcasting sector in the Republic of Congo were addressed in Law No. 30-96 of 2 July 1996 on the freedom of the press and the procedures for application set out in Decree No. 96-347 of 31 July 1996.

7. This legislative regime relating to the television and broadcasting sector was further developed in 2001 with the enactment of Law No. 8-2001 of 12 November 2001 on the freedom of information and communication, which currently serves as the reference legal framework in this area.

* Contribution submitted by Mr. Philippe Nsonde-Mondzie, Director-General of Competition and Anti-Fraud and Commercial Crimes, Republic of the Congo.

8. Law No. 8-2001 of 12 November 2001 enshrines the free enterprise regime and prohibits any form of concentration of enterprises under the authority of a legal or natural person under private law. It creates a Higher Council for the Freedom of Communication as the regulatory authority, providing it with decision-making power over the award and withdrawal of radio and television frequencies and over the suspension or closure of an audiovisual programme or publication that fails to comply with the provisions of the specifications.

9. However, this new legislative framework sets out the conditions for free competition without addressing anti-competitive practices in the specific area of television and radio broadcasting.

10. For the record, it may be noted that in the 1990s the Republic of Congo had only one (1) radio broadcasting channel (Radio Congo), a public channel, and a rural radio project broadcasting on a trial basis from transmitters located in Brazzaville, Pointe Noire and Nkayi. As for television broadcasting, only Télé Congo, a national channel, was in operation, providing coverage over the entire country.

11. Since the enactment of the new Law in 2001, there has been a significant increase in the number of private television and radio broadcasting channels, particularly in the two main cities:

- Twelve (12) television channels, of which six (6) in each city;
- Fourteen (14) radio stations distributed equally between the two cities.

12. The rest of the country provide a further seven (7) private radio stations and three (3) private television channels.

13. Despite the emergence of large numbers of radio and television broadcasting stations throughout the country, it is worth noting that, apart from DRTV, no other private channel provides both national and international coverage. All private channels broadcast over relatively limited ranges. They receive no State subsidies, even though the legislation provides for the possibility of direct or indirect aid to public or private information and communication enterprises.

14. It needs to be said that not all of these channels are commercial channels. For example, some channels broadcast religious or charity programmes and can capture a dominant market share of the listening audience for what are primarily subjective reasons which take no account of the quality of the services they supply.

15. A survey in the Brazzaville *département* revealed a free and diversified set of tariffs charged by channels for the same type of service. By way of illustration, tariffs for television broadcasting vary from:

- FCFA 40 000 (**€60.98**) to 150 000 FCFA (**€216.6**) for an advertising spot;
- FCFA 15 000 (**€22.87**) to 75 000FCFA (**€114.32**) for a commercial announcement;
- FCFA 50 000 (**€72.20**) to 100 000FCFA (**€152.40**) for advertising space in a news programme

16. The following spread was noted in the case of radio broadcasting:

- FCFA 10 000 (**€15.53**) to FCFA 15 000 (**€22.86**) for an advertising spot;
- FCFA 3 500 (**€5.33**) to FCFA 7 500 (**€11.43**) for a trade announcement;
- FCFA 100 000 (**€152.43**) to FCFA 150 000 (**€228.65**) for a special feature.

17. The rates charged and frequency allocations observed on the ground also vary from one client to another. They vary from FCFA 500 000 (€762.189) to FCFA 5 000 000 (€7621.95).

18. The disparities observed provide an indication of competition whose description will require a methodical examination of market operation, in order to avoid, should it prove necessary, any distortions in the free play of competition.

3. Current and future challenges to competition policy with regard to television and radio broadcasting

19. To remedy the multiple difficulties facing the television and radio broadcasting sector such as, *inter alia*, the lack of adequate technical infrastructure, particularly in rural areas, the inability to cover the entire national territory, strong pressure from foreign media, frequency interference caused by the proximity of the Brazzaville to Kinshasa, possible measures might include action to:

1. consolidate the legal framework for competition by enacting legislation on competition and consumer protection;
2. put in place the National Competition Authority;
3. establish a regulatory framework in which the authorities can provide support to radio and television enterprises, as provided for under Article 8 of Law No. 8-2001 of 12 November 2001;
4. ground this sector in New Information and Communication Technologies (NICT) ;
5. put in place a capacity-building programme for private media presenters;
6. promote fibre-optic networks as soon as they are operational;
7. remove taxes on information and communication equipment to facilitate purchases of high-quality operating systems by all parties.

4. Experience with competition law and its application in the area of radio and television broadcasting

20. Pending the introduction and enactment of legislation on competition and consumer protection, it would not seem possible to assess the application of competition law in the Republic of Congo.

21. Details regarding the vertical integration of suppliers and problems arising from cross-holdings between media groups will be clarified in the regulatory texts.

22. Our participation in the current meetings is an opportunity, firstly, to learn about the experiences of other countries and international institutions in the area of competition and, secondly, to examine the many-sided problem of support for the strengthening and development of skills in the implementation of national competition policy in a strongly expanding market in different sectors of economic activity.

23. Thank you!