# NATIONAL COMPETITION POLICY

SEYCHELLES

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# TABLE OF CONTENTS


| | | Page |
|---|---|---|
| | **ABBREVIATIONS AND ACRONYMS** | **2** |
| | **WORKING DEFINITIONS** | **3** |
| **1.** | **INTRODUCTION AND BACKGROUND** | **5** |
| 1.1 | Introduction | 5 |
| 1.2 | Background | 6 |
| 1.3 | What Is Competition Policy | 7 |
| 1.4 | Why Competition Policy | 7 |
| 1.5 | Benefits of Competition Policy | 8 |
| **2.** | **GUIDING PRINCIPLES, OBJECTIVES AND STRATEGIC POLICY CONSIDERATIONS** | **9** |
| 2.1 | Guiding Principles | 9 |
| 2.2 | Objectives of the Policy | 9 |
| 2.3 | Strategic Policy Considerations: | 10 |
| 2.3.1 | Consistency of The Competition Policy with Other National Policies and Laws | 10 |
| 2.3.2 | Raising Awareness and Support for Competition Enforcement | 10 |
| 2.3.3 | Inter-Sector Regulator Linkages | 10 |
| 2.3.4 | Essential Facilities | 11 |
| 2.3.5 | Restrictive Business Practices | 11 |
| 2.3.6 | Mergers and Acquisitions | 11 |
| 2.3.7 | Abuse of Dominance | 12 |
| 2.3.8 | Cartels | 12 |
| 2.3.9 | Trade and Professional Associations | 12 |
| 2.3.10 | Exemptions and Exclusions | 13 |
| 2.3.11 | Small Scale Firms | 13 |
| 2.3.12 | Consumer Protection | 14 |
| 2.3.13 | Remedies | 14 |
| **3.** | **REGULATORY FRAMEWORK AND INSTITUTIONAL ARRANGEMENTS** | **14** |
| 3.1 | Regulatory Framework | 14 |
| 3.2 | Institutional Arrangements: | 14 |
| 3.2.1 | Competition Authority | 14 |
| 3.2.2 | Appeal Authorities | 16 |
| **4.** | **MONITORING AND EVALUATION** | **16** |

# ABBREVIATIONS AND ACRONYMS

| | |
|---|---|
| **COMESA** | Common Market for Eastern and Southern Africa |
| **FTC** | Fair Trading Commission |
| **IGE** | Inter-Governmental Group of Experts on Competition law and Policy (of UNCTAD) |
| **IPRs** | Intellectual Property Rights |
| **IMF** | International Monetary Fund |
| **MERP** | Macro-Economic Reform Programme |
| **NCP** | National Competition Policy |
| **NDP** | National Development Plan |
| **RIA** | Regulatory Impact Assessment |
| **SIDS** | Small Island Developing States |
| **SMEs** | Small and Medium Enterprises |
| **SOEs** | State-Owned Enterprises |
| **UNCED** | United Nations Conference on Environment and Development |
| **UNCTAD** | United Nations Conference on Trade and Development |

# WORKING DEFINITIONS

The following definitions are specifically adopted for the interpretation of terms used in this National Competition Policy (NCP), and not necessarily for adoption for use in the interpretation of terms in any other laws and regulations.

(a) "agreement" means any form of contract, arrangement or understanding, whether or not legally enforceable, between enterprises, and includes a decision by an association and concerted practices;

(b) "business": (a) means the carrying on of any commercial activity for gain or reward; and (b) includes a trade or profession and the activities of a professional or trade association or of a public body;

(c) "concerted practice" means co-operative or co-ordinated conduct between enterprises achieved through direct or indirect contact, that replaces their independent action, but which does not amount to an agreement;

(d) "consumer" means any direct or indirect purchaser or user of a product or service supplied by an enterprise in the course of business, and includes: (i) another enterprise that uses the product or service thus supplied as an input to its own business; and (ii) a wholesaler, a retailer and a final consumer;

(e) "dominant position" means a situation where an enterprise or a group of enterprises possesses such economic strength in a market as to make it possible for it to operate in that market independently, and to adjust prices or output, without effective constraint from competitors or potential competitors;

(f) "enterprise" means any person, firm, partnership, corporation, company, association, or other juridical person engaged in commercial activities for gain or reward, and includes its branches, subsidiaries, affiliates or other entities directly or indirectly controlled by it;

(g) "essential facility" means an infrastructure or resource that cannot reasonably be duplicated, and without access to which competitors cannot reasonably provide goods or services to their customers;

(h) "excessive price" means a price for a good or service which bears no reasonable relation to the economic value of that good or service, or is higher than the economic value of the good or service;

(i) "horizontal agreement" means an agreement between enterprises each of which operates, for the purpose of the agreement, at the same level of the market and would normally be actual or potential competitors in that market;

(j) “market power” means the power of an enterprise to control prices, output or trading terms, to exclude competition or to behave to an appreciable extent independently of its competitors, customers or suppliers;

(k) “merger” means the acquisition or establishment, direct or indirect, by one or more enterprises, whether by purchase of shares or assets, lease of assets, amalgamation or combination or otherwise, of control over the whole or a part of the business of an immediate competitor, supplier, consumer or other enterprise;

(l) “regulator” means a regulatory body or agency, or a Government department that exercises functions of prudential, technical or economic regulation on the basis of statutory powers;

(m) “relevant market” refers to the general conditions under which sellers and buyers exchange goods and services, and implies the definition of the boundaries that identify groups of sellers and of buyers of goods and services within which competition is likely to be restrained. It requires the delineation of the product and geographical lines within which specific groups of goods, buyers and sellers interact to establish prices and output. It should include all reasonably substitutable products or services, and all nearby competitors, to which consumers could turn in the short term if the restraint or abuse increased prices by a not insignificant amount;

(n) “resale price maintenance” refers to a pricing arrangement in which an upstream firm seeks to influence the pricing of its products by downstream firms. In the simplest form, the manufacturer of a branded product requires retailers to sell its products at, or above, a specified minimum price;

(o) “restrictive business practice” includes abuse of dominant position, anti-competitive agreements, resale price maintenance, and anti-competitive mergers and acquisitions;

(p) “vertical agreement” means an agreement between enterprises each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain and relates to the conditions under which the parties may purchase, sell or resell certain goods or services.

# 1. INTRODUCTION AND BACKGROUND

## 1.1 Introduction

Competition policy has become a useful tool in ensuring the success of structural economic reform programmes that are being undertaken in many jurisdictions, more so in developing countries. Competition policy has become the most reliable safeguard against market monopolisation and restrictive business practices that deter the efficient operation of markets as the markets expand through globalisation. Competition policy, in this regard, provides a framework to regulate market conduct thereby safeguarding the benefits of market liberalisation, as well as guarding against market failure.

By ensuring and protecting the process of competition in markets, competition policy enhances innovation and investment, which is key to economic development, and to broadening consumer choice, enhancing quality of goods and services and ensuring lower prices, hence enhancing the welfare of consumers in society. Competition policy in this regard is beneficial to all economies, regardless of size and location.

The Seychelles comprise 115 tropical islands spread over 1.374 million square kilometres in the western Indian Ocean off the mainland of Africa. The population of Seychelles is relatively small, numbering about 89 170 (2013 est.). It is one of the fifty-two countries and territories that are presently classified as Small Island Developing States (SIDS) by the United Nations Conference on Environment and Development (UNCED). The common challenges faced by the SIDS include: narrow resource base depriving them of the benefits of economies of scale; small domestic markets and heavy dependence on a few external and remote markets; high costs for energy, infrastructure, transportation, communication and servicing; long distances from export markets and import resources; low and irregular international traffic volumes; high volatility of economic growth; and limited opportunities for the private sector and a proportionately large reliance of their economies on their public sector.

The economy of Seychelles is predominantly service-based, and sometimes vulnerable to global shocks and climate change due to its location and small size. In addition, given its limited land size and low levels of diversification, the country is a heavy net importer of essentials such as food, oil, raw materials, etc. The country is thus highly vulnerable to global economic shocks, particularly those related to international terms of trade. It is also vulnerable to offshore anti-competitive business practices such as export cartels.

Tourism and fisheries (fishing and fish processing) are the economy's two major economic sectors. Tourism accounts for 25% of the country's GDP, 25% of employment, and 70% of foreign exchange earnings. Tuna fishing and processing accounts for close to 5% of GDP, about 7% of employment, and around 35% of export goods, despite impacts of piracy, environmental factors and increased regional competition between fishing Ports and processing plants.

In recent years, the Government has encouraged foreign investment in upgrade hotels and other services. At the same time, the Government has moved to reduce the dependence on tourism by

promoting the development of farming, and small-scale manufacturing. However, the economy remains concentrated and the role of Government as an economic player is still high in the regulated sectors such as telecommunications, energy, financial services, construction, retail, professional services, transport, health care, etc.

The structure and special circumstances surrounding the economy of Seychelles makes the country susceptible to a wide range of anti-competitive practices, such as abuse of dominant positions, or monopolisation, by the existing few market players, internal and external cartels, and other forms of anti-competitive agreements. This envisages a tailor-made competition policy to effectively deal with these challenges.

This competition policy, therefore, establishes the parameters and the strategic policy considerations that will guide the direction that the country needs to take to guarantee a competitive environment that ensures the thriving of business enterprises. The policy also articulates the regulatory and institutional arrangements necessary for the effective implementation and enforcement of a competition law in the country.

## 1.2 Background

The Government of Seychelles in the 2000s embarked on two Macro-Economic Reform Programmes (MERPs). The first MERP in 2002 recognised that the private sector had a role to play in creating wealth, and the privatisation of State-Owned Enterprises (SOEs) begun. The second MERP in 2008, which was assisted by the International Monetary Fund (IMF), was wider and comprehensive in response to the National Development Plan (NDP) that had been launched in March 2007 as *Seychelles Strategy 2017*. The Strategy outlined the plan to double the country's GDP over the next decade by stimulating private sector development and reducing the commercial activities of the State. The Government proposed to do that by curtailing its role as an economic actor, and to focus instead on operating as an economic facilitator, as well as by creating economic conditions conducive to increased wealth generation by private businesses and individuals.

Going forward, Seychelles has committed itself to completing regulatory reforms that are designed to improve the business environment, address access to finance, and increase Seychellois' participation in the main economic sectors. The country's NDP identifies tourism and fisheries, which have propelled the economy since Independence in 1976, as the priority sectors to drive the economy towards the attainment of the Plan's objectives. In addition, the Plan identifies the development of the financial services sector as an additional priority sector, as well as a support sector to the other two priority sectors.

Despite enacting several pieces of legislation aimed at ensuring the removal of barriers to free enterprise, the progress across sectors has been somewhat uneven and slow. Such laws and policies have had restraints on the competition drive in many areas of the economy and as a result, the structure of the market remains concentrated to a large extent. It is with this challenge in mind that Seychelles has come up with this coherent National Competition Policy (NCP) to guide in building a broad framework of consensus in which Government responds to anti-competitive challenges in the marketplace. The NCP will also inform the needs for any amendment of the existing competition legislation and the need for harmonisation with other national and regional competition legislations.

An effective competition policy in the form of a comprehensive NCP plays a definite role in the meeting of the objectives of the Government's NDP by ensuring competitive markets in the country, and promoting innovation and productive efficiencies.

The need for a comprehensive NCP for Seychelles was also identified during the voluntary peer review of the enforcement of the country's competition law that was undertaken under the auspices of the United Nations Conference on Trade and Development (UNCTAD). The report of the peer review, together with its recommendations, was adopted for implementation at the 14th Session of UNCTAD's Inter-Governmental Group of Experts on Competition Law and Policy (IGE) that was held in Geneva, Switzerland, in July 2014.

The formulation of the NCP was largely based on consultations held with key stakeholders in the economy of Seychelles, including Government Ministries and Departments, sector regulators, SOEs, business and consumer associations, and other professional associations and enterprises. A partial regulatory impact assessment (RIA) was also undertaken with particular emphasis on competition impact assessment of some laws and regulations in Seychelles. Comparisons were further made with other competition policies of developing and developed countries in the region and beyond.

## 1.3 What is Competition Policy?

Competition policy refers to the full range of measures that may be used to promote competitive market structures and behaviour, including, but not limited to, a comprehensive competition law dealing with anti-competitive practices of enterprises. Competition policy is, therefore, about applying rules to make sure that businesses and companies compete fairly with each other, thus encouraging enterprise and efficiency, creating a wider choice of goods and services for consumers, and helping reduce prices and improving quality of goods and services. Competition thus ensures enterprise interaction on a level playing field, and fosters entrepreneurship activity and innovation.

Effective competition is therefore a key part of the development agenda since it encourages businesses to operate efficiently in order to remain competitive. The developmental benefits of competition have been identified and documented by virtually all international organisations with economic and social developmental mandates. It has been proved that increased competition improves a country's economic performance, opens business opportunities to its citizens and reduces the cost of goods and services throughout the economy. Competition thus is the instrument for attaining economic growth through enhanced innovation, efficiency and increased productivity, as well as ensuring social gains by overall poverty reduction and greater consumer welfare.

Competition policy is also complementary to other socio-economic policies that aim to achieve economic progress and effective management of the economy, such as: trade and industrial policies; investment and privatization policies; regulatory policies; intellectual property policy; consumer welfare and protection policy; labour policy; environmental policy; and empowerment policy.

## 1.4 Why Competition Policy

Seychelles has been enforcing competition law since 2010 under the Fair Competition Act, 2009. The Act is administered by the Fair Trading Commission (FTC), which also administers the Consumer

Protection Act, 2010. The preamble to the Fair Competition Act, 2009 states that it is "an Act to promote, maintain and encourage competition, to prohibit the prevention, restriction or distortion of competition, and abuse of dominant positions in trade, to ensure that enterprises, irrespective of size, have the opportunity to participate equitably in the marketplace".

The enforcement of competition law in Seychelles however preceded the formulation and adoption of a comprehensive national competition policy. A comprehensive national competition policy for Seychelles is vital as an overarching policy framework to ensure multi-sectoral consensus in dealing with anti-competitive business practices in the country, thus facilitating the effective enforcement of competition law by the FTC, and guiding government intervention in taking measures to promote competitive market structures and behaviour. The prime purpose of such a policy is to promote and maintain a process of effective competition across economic sectors so as to achieve a more efficient allocation of resources. A comprehensive national competition policy is also a useful advocacy tool as it provides a forum for stakeholder engagement aimed at building a competition culture that is receptive to, and supportive of, the competition regime.

The fundamental role of competition policy is also to guarantee consumer welfare by encouraging optimal allocation of resources and granting economic agents appropriate incentives to pursue productive efficiency, quality and innovation.

## 1.5 Benefits of Competition Policy

The National Competition Policy (NCP) for Seychelles should be a 'Seychelles-tailored' group of policies which will take into account the current competition law being enforced, and any applicable regulations or guidelines, as well as other laws which contain competition law provisions. The size and economic structure of the Seychelles market should also be taken into account to ensure that a tailored policy is created that can effectively be implemented.

The NCP will allow the Government of Seychelles to respond to anti-competitive challenges in the marketplace, as well as ensure that businesses in various sectors adhere to regulatory requirements and policies. It will therefore be the regulatory tool that the Government will employ to address market failures. The NCP will also allow a fair application of the Fair Competition Act, 2009 within all sectors in the domestic market.

The main benefits of such a Policy are as follows:

- enhance consumer welfare where consumers will have a wider choice and greater availability of quality goods and services at lower prices;
- improvements in the utilisation and allocation of available resources by the Government through competitive procurement process;
- the promotion of economic growth and development through enhanced productivity in the production and supply of goods and services, leading to an improved quality of life;
- increase in product/service innovation and efficiency due to the pressure generated by competition on businesses; and
- increase assurance for investors which would lead to a better environment for foreign direct investment in an actively competitive market.

# 2. GUIDING PRINCIPLES, OBJECTIVES AND STRATEGIC POLICY CONSIDERATIONS

## 2.1 Guiding Principles

Taking into account all of the foregoing, the National Competition Policy (NCP) of Seychelles is based on the following principles:

- *Effective prevention of anti-competitive conduct*: this entails the effective monitoring and prevention of anti-competitive business conduct through the effective enforcement of the Fair Competition Act, 2009, and advocacy and awareness programmes. The formulation and implementation of the Policy is expected to build and enhance competition culture in Seychelles, hence assist in ensuring effective enforcement of competition law.
- *Fair market process*: this will ensure transparency and non-discrimination in the regulation of the market given that the process is rule-based and subject to review process by the independent mechanism.
- *Institutional separation between policy making, operations, regulation*: this ensures that sectoral regulation is independent of government interference, and that government only concentrates on policy making.
- *Competitive neutrality*: this entails the adoption of policies which establish a level playing field between SOEs and private-owned businesses.
- *Fair pricing and inclusionary behaviour, particularly of public utilities*: this behaviour, which could be instilled with monopolistic characteristics and a large part of the consumers, could be excluded.
- *Third party access to 'essential facilities'*: which requires that dominant owners of key infrastructure facilities, e.g., for electricity, communications, pipelines, etc., offer access to their facilities to competitors on agreed terms and conditions and based on the regulated pricing model aligned to competition principles.
- *Public policies and programmes*: to work towards promotion of competition in the marketplace.
- *National, regional and international institutional co-operation*: Co-operation in the field of competition policy and enforcement and advocacy.

## 2.2 Objectives of the Policy

Taking into account the socio-economic context of Seychelles, and in particular considering the country's SIDS status, the NCP aims to promote economic democracy, achievement of highest sustainable levels of economic growth, entrepreneurship, employment, higher standards of living, and to protect economic rights for just, equitable, inclusive and sustainable economic and social development, and support good governance by restricting rent seeking practices and behaviour.

With the above in mind, the following will be the NCP's objectives:

(i) To ensure that the FTC and sector regulators promote competition in the regulated sectors of Seychelles in a collaborative and complementary manner;
(ii) To secure the consistent application of the principles of the Fair Competition Act, 2009 in all sectors of the economy of Seychelles;
(iii) To promote the efficiency and competitiveness of small scale firms, and to protect such firms against the abusive practices of larger firms, as well as to ensure the promotion of small scale firms necessary to exert competition pressure and constrain on the large market incumbents;
(iv) To redress and prevent restrictive business practices against other firms or consumers and ensure transparency in the implementation of such policies and rules;
(v) To prevent the creation through combinations and mergers of market structures that could lead to substantial lessening of competition in the relevant markets, or to abuse of dominance, and to ensure efficient and transparent merger control as a means of addressing *ex-ante* anti-competitive practices;
(vi) To ensure equitable and affordable access to essential facilities;
(vii) To ensure that intellectual property rights (IPRs) are not abused by the holders for anti-competitive purposes;
(viii) To ensure the protection of consumers from exploitation;
(ix) To ensure that remedies and penalties on anti-competitive practices and conduct achieve their desired results.

## 2.3 Strategic Policy Considerations

### 2.3.1 Consistency of the Competition Policy with Other National Policies and Laws

Government realises that in order to achieve the objectives of the NCP, there should be harmony with other national policies, such as the National Development Plan (*Seychelles Strategy 2017*), trade and industrial policies, investment and privatisation policies, among other policies.

Inconsistent policies and laws lead to duplication of roles, waste of resources and divergent outputs, which frustrate the overall objectives of the policies.

### 2.3.2 Raising Awareness and Support for Competition Enforcement

Government appreciates the importance of creating a culture of competition among the business community, policy makers and other stakeholders for the realisation of the economic benefits of competition:

- the Government will accordingly carry out information and dissemination activities, and sensitise consumers and enterprises about their rights and the recourse available to them in the event their rights are violated;
- the Government shall engage the media in the sensitisation process, and shall ensure that the media is properly educated on matters concerning competition policy and law.

### 2.3.3 Inter-Sector Regulator Linkages

Government recognises the importance of having sector specific regulators in order to address the shortcomings of a market oriented system, and of ensuring that the different sector regulators do not enforce their respective pieces of legislation in a fragmented manner:

- the Government shall ensure that all the relevant sector regulators cooperate with their counterparts and with the Competition Authority in the enforcement of the respective pieces of legislation;
- the Government shall also create mechanisms for inter-sector regulator linkages;
- the Government shall further ensure that legislation related to this NCP and other existing laws which are related to competition policy are harmonised in order to guarantee consistency in their application.

### 2.3.4 Essential Facilities

Government is aware of the existence of essential facilities in various sectors of the economy, most of which are of an infrastructural nature and were built for SOEs, access to which might be denied to third party users by the owners thereby placing the potential users in a clear uncompetitive position:

- the Government shall develop access guidelines for essential facilities to ensure equitable, transparent and affordable access to the facilities by actual and potential users;
- the Government shall regularly monitor the implementation of the access guidelines.

### 2.3.5 Restrictive Business Practices

Government is mindful of the fact that the peculiarities of the SIDS status of Seychelles induce and facilitate various forms of restrictive business practices, particularly anti-competitive agreements of both horizontal and vertical nature, in all sectors of the economy. Most of the restrictive business practices are proscribed in the country's competition laws, including those related to sector regulation:

- the Government shall undertake periodic studies and research to ascertain the existence of restrictive practices in the economy;
- the Government shall also develop enforcement mechanisms that will enable the relevant institutions to investigate and remedy restrictive business conduct;
- certain restrictive business practices that are inherently harmful to competition will be *per se* prohibited, while those that have some efficiency, or pro-competitive, elements, or are in the public interest, will be considered using the rule-of-reason approach.

### 2.3.6 Mergers and Acquisitions

Government realises the need for merger control in Seychelles, despite the smallness of the country's economy, because mergers and acquisitions can seriously affect competition in the relevant markets through the creation of dominant or monopoly companies that can abuse their positions of market power, and is aware that some business combinations in Seychelles may be concluded without their competitive effects being assessed. Government also recognises that public interest considerations are crucial in merger assessment in Seychelles, given the country's socio-economic circumstances:

- the Government shall put in place pre-merger notification guidelines and thresholds to ensure that all mergers likely to adversely affect competition are notified for assessment in order to prevent the creation of market structures that are likely to lead to a substantial lessening of competition, or abuse of dominance;
- the Government shall develop merger assessment guidelines where it shall elaborate factors to be taken into account under public interest considerations;
- all stakeholders likely to be affected by merger transactions shall be consulted in the assessment and examination of the mergers to ensure that all such transactions are assessed and examined in a transparent and efficient manner.

### 2.3.7 Abuse of Dominance

Government recognises and accepts that dominance *per se* is not anti-competitive since a company can dominate a market through greater entrepreneurial skills, innovation and efficiency, which are all hallmarks of competition. What is anti-competitive is the abuse of the dominance, or the exercise of the market power that comes with dominance, through engagement in exploitative practices (e.g., excessive pricing, resale price maintenance, discriminatory practices) and/or exclusionary practices (e.g., predatory pricing, refusal to deal, raising competitors' costs):

- the Government shall conduct research studies to identify abuse and potential abuse of dominance, or monopolisation, and take appropriate action in order to prevent abuse of dominant positions, or address existing abuses of dominance;
- the Government shall develop anti-monopolisation enforcement mechanisms to deter would-be offenders;
- the Government shall encourage companies in dominant positions to conclude and enter into competition compliance programmes and agreements with the Competition Authority.

### 2.3.8 Cartels

Government recognises that given the smallness of the economy of Seychelles and the closeness of the country's businesses, collusive and cartel-like behaviour is likely in the marketplace. Government also notes that hard-core cartel activities such as price-fixing, market-sharing and bid-rigging are conspiracies against the public with no redeeming economic justification.

The Government shall accordingly do the following with regards to cartel activities:

- undertake periodic research to identify the existence of cartels in the economy;
- put in place appropriate enforcement mechanisms, such as stiffer fines and penalties, which will deter the formation of cartels;
- establish a mechanism to encourage whistle-blowers and informers, and provide for their protection, to report on cartel activity, including the introduction of a leniency programme aimed at getting relevant information from cartel members;
- deal with the cartel-facilitating issue of interlocking directorships by putting into place measures limiting the number of Boards of Directors that an individual can sit on in both public and private companies;
- strengthen close relationships with the COMESA Competition Commission and other national competition authorities in the investigation and prosecution of cartels.

### 2.3.9 Trade and Professional Associations

Government is aware that trade and professional associations are primarily established to serve their members in maintaining standards and ethics, which help in the delivery of services to the public and are generally beneficial to society and the economy as a whole. However, in promoting and protecting the interests of their members, associations may engage in various restrictive business practices, such as fixing prices, allocating custom, and creating entry barriers:

- the Government shall engage in the periodic review of activities and legal framework of trade and professional associations to ensure that they do not engage in restrictive business conduct;
- the Government shall also develop enforcement mechanisms that will deter trade and professional associations from engaging in restrictive business conduct.

### 2.3.10 Exemptions and Exclusions

Government subscribes to the principle that since competition law, like all other laws, is a general law of general application and should therefore apply to all sectors, and to all industries, agreements and entities engaged in the commercial exchange of goods and services. It however also acknowledges that some exemptions and exclusions from the application of competition law should be granted for social, economic and political reasons:

- the Government shall allow for exemptions from the application of the competition legislation only to the extent that the exemptions do not facilitate the creation of an anti-competitive environment, and that the public interest benefits of the exemption outweigh the costs to competition;
- the Government shall establish a mechanism for the periodic review of the exemptions and authorisations granted;
- the Government shall allow matters of trade unions by employees not to be subject to the competition legislation to allow employees and employers to arrive at appropriate conditions of service without undue hindrance, and not to disguise under free competition to abuse either party;
- the Government shall allow intellectual property rights (IPRs) to be exempted from the application of the competition legislation to the extent that the rights are used to encourage and stimulate innovation and not to facilitate an anti-competitive conduct.

### 2.3.11 Small Scale Firms

Government recognises in the National Development Plan (*Seychelles Strategy 2017*) the importance of promoting and developing small and medium enterprises (SMEs) as a tool of economic development. SMEs also provide an effective constrain against anti-competitive practices of larger firms. The Government shall therefore promote the efficiency and competitiveness of small scale firms in Seychelles through the following measures:

- allowing and encouraging small and medium enterprises to form strategic alliances and to conclude cooperative agreements that increase their economies of scale and ability to fairly

compete with larger firms, but closely monitoring the alliances to ensure that they do not act as breeding ground for anti-competitive cartel activity;

- enforcing strictly the Seychelles Investment (Economic Activities) Regulations, 2014 (S.I. 71 of 2014) under the Seychelles Investment Act, 2010, which are aimed at empowering small and medium enterprises in Seychelles;
- continuing aiding and assisting small and medium enterprises by facilitating the provision of concessionary loans, as well as access to commercial space, raw materials and other inputs;
- strengthening the agencies that promote small enterprises in Seychelles to enable them to better perform their useful functions.

#### 2.3.12 Consumer Protection

Government recognises that the consumer is the most important sector of the economy, and that the ultimate objective of competition policy is consumer welfare and protection:

- the Government shall enhance and strengthen the legislation dealing with consumer welfare to ensure that the consumers are not unfairly treated in their interactions with the traders;
- the cooperation between the Competition Authority and the consumer watchdog shall be fostered for the better protection of the consumer;
- the Government will formulate and adopt a comprehensive national consumer welfare and protection policy, given the prevailing conditions of consumers in Seychelles.

#### 2.3.13 Remedies

Government will ensure that remedies and penalties on anti-competitive practices and conduct achieve their desired results. This will be achieved by, among others, ensuring that the investigative process properly defines the remedial objectives and formulate plans for attaining the objectives. In addition, the authorities will ensure a thorough understanding of the relevant industry and how it is likely to evolve under various remedial scenarios.

# 3. REGULATORY FRAMEWORK AND INSTITUTIONAL ARRANGEMENTS

## 3.1 Regulatory Framework

In order to ensure compliance with and adherence to locally and internationally acceptable rules and regulations dealing with anti-competitive business behaviour and conduct, the Government of Seychelles will review the existing competition laws under which competition in the marketplace is regulated to align them with this NCP. Where necessary, new appropriate laws will be formulated and enacted.

## 3.2 Institutional Arrangements

Whilst the relevant Government Ministry shall have the responsibility of the institutional arrangements for the formulation, review and monitoring of the implementation of the competition policy and its related legislation, there is need for an institutional framework to regulate, monitor,

investigate, control and prevent acts or behaviour which are likely to adversely affect competition and fair trading. The relevant institutions are the Competition Authority and the appeal authorities.

### 3.2.1 Competition Authority

#### *(a) A Stand-Alone Competition Authority*

There will be an independent stand-alone Competition Authority with administrative and financial autonomy, which is the typical model for competition law enforcement and regulation in most countries.

#### *(b) Functions of the Competition Authority*

The Competition Authority shall have, among other functions, advocacy, investigative and enforcement functions, which include:

- Promoting and maintaining fair competition in Seychelles;
- Carrying out on its own initiative or at the request of any interested party investigations into restrictive and unfair business practices;
- Keeping under review commercial activities to ensure that practices that may adversely or unfairly affect the interests of consumers and businesses are prevented or terminated;
- Taking such action as to prevent the abuse of dominant positions by enterprises, eliminate other anti-competitive practices, and prevent or control anti-competitive mergers and acquisitions;
- Issuing remedial orders against anti-competitive practices;
- Making available to enterprises and consumers general information with respect to their rights and obligations under competition law;
- Advising Government on the actual or likely anti-competitive effects of current or proposed policies or legislation, and where appropriate, how to avoid those effects;
- Providing competition impact assessment tools to agencies, authorities or Ministries to assist in the assessment of proposed policies;

#### *(c) Separation of Functions of the Competition Authority*

The operations of the Competition Authority would be strategically governed by a Board of Commissioners, which would also be responsible for carrying out the adjudicative functions of the Authority. A Secretariat headed by a Chief Executive Officer would be responsible for investigations and the day-to-day operations of the Authority. The Chief Executive Officer must be an *ex officio* member of the Board of Commissioners on administrative matters.

In line with the rules of natural justice, the relevant legislation and operational arrangements shall ensure a clear separation of the Competition Authority's investigative and adjudicative functions. In that regard, provision shall be made in the legislation and operational arrangements that the Secretariat of the Authority will have the primary responsibility of undertaking preliminary investigations into competition complaints to establish *prima facie* cases on the existence of competition concerns, while the Board of Commissioners will be responsible for adjudicating on competition cases using the inquisitorial system in arriving at decisions.

### *(d) Independence of the Competition Authority*

The independence of the Competition Authority is crucial for the effective performance of its functions. Such independence must be guaranteed in the relevant legislation from the following three dimensions:

- *Institutional Independence*: the degree of freedom, which the Competition Authority has to have to undertake its daily tasks without the interference from the Government, including freedom in the recruitment and retention of suitable personnel and utilisation of financial resources;
- *Personal Independence*: the freedom of the members of the decision making body of the Competition Authority to decide cases on the merit (i.e., based on the law and the facts of the case) and not being influenced by political considerations or their individual interests;
- *Budgetary Independence*: the Competition Authority having its own financial budget independent of a Government Ministry, and accountable to Parliament.

The independence of the Competition Authority must be looked at in the context of decision-making autonomy. In that regard, the Competition Authority must have all the necessary powers of making decisions and determinations on competition cases without outside influence and interference. However, policy directives from the Government on the implementation of competition policy are inevitable, and desirable, since the Competition Authority is a creature of Statute meant to implement government policy, and the implementation of competition policy must be in coherence with the implementation of the Government's other socio-economic policies. Policy directions from the Government should however remain as such, and should not extend to directing the day-to-day operations of the Authority.

### *(e) Resources of the Competition Authority*

Besides ensuring that the Competition Authority has full decision-making autonomy, the Authority also needs to be strengthened to enable it to better fulfil its statutory mandates. The strengthening must be in the provision of adequate financial and human resources.

The Authority shall be sufficiently financed to enable it to adequately enforce the country's competition law throughout the Seychelles archipelago, as well as to embark on advocacy and awareness campaigns on the importance of competition.

Human resources are the Competition Authority's most valuable assets, and shall therefore be developed through training and capacity building programmes.

### 3.2.2 Appeal Authorities

There would be a specialised Appeal Tribunal to hear appeals from any dissatisfied party against the Competition Authority's decisions, orders or directions. The Tribunal would be an independent adjudicative entity and would hear all sides of a case before making a decision, and will be guided by the three key principles of: (i) due process; (ii) accountability; and (iii) procedural fairness.

Appeals against the decisions of the Appeal Tribunal are to be made to the Supreme Court of Seychelles.

# 4. MONITORING AND EVALUATION

The Seychelles Government Ministry responsible for finance, trade and investment shall provide political support and facilitate the monitoring of the implementation process of this NCP and be responsible for evaluating the policy benchmarks. The Ministry shall conduct periodic monitoring exercises to assess adherence to the provisions of the NCP and to determine whether intervention activities are contributing towards the policy and its outlined objectives.

The Ministry shall establish an inter-disciplinary Monitoring and Evaluation Committee to assist it in conducting the periodic monitoring exercises. The Committee shall comprise of the relevant Government Ministries, sector regulators, professional associations, as well as business and consumer associations.