VERTICAL RESTRAINTS

Introduction

Vertical restraints refers to restrictive agreements made between firms at different levels of the production/distribution/supply chain e.g. between a manufacturer and a wholesaler or a manufacturer and a retailer.

It is recognised that vertical restraints may have positive effect, e.g. by removing price distortions, optimizing investment levels and eliminating avoidable transaction costs, but may also have undesirable effect not only by foreclosing markets to new entrants but also by dampening competition between existing rivals through stifling inter-brand and/or intra-brand competition. For example, exclusive dealing facilitates manufacturer investment in distribution activity, but it tends to raise manufacturer margins. In the same way, exclusive distribution (which grants retailers exclusivity within a geographic area or over a particular class of consumers or goods) allows retailers to plan on the basis of particular market, but tends to increase retailer margins. Trade offs of this nature are common and the challenge to competition authorities is to determine the market conditions under which bad effects are likely to exceed the good ones, and vice versa. Dobson and Waterson (1996) identify this market conditions as market power at one or both levels. Market power coupled with nature of the agreement between successive levels, the extent of economic scope in retailing and the existing degree of inter and intra-brand competition raises serious public policy concern over vertical restraints.

Due to the divergence of opinion on vertical restraints, in some jurisdiction they are treated as per se offences, while in others they are subjected to “rule of reason” approach. The per se treatment assumes that they are anti-competitive irrespective of the advantages they may have while the “rule of reason” assumes that vertical restraints may have some net public benefit, in which case they are said to be pro-competitive. In some countries they are viewed as efficiency enhancing and therefore they are rarely challenged.

Types of Vertical Restraints

There are various types of vertical restraints including Retail Price Maintenance (RPM), exclusive dealing, tying arrangements, exclusive territory or territorial market restrictions, quantity forcing, refusal to supply and service requirements.

- Resale Price Maintenance

RPM or vertical price fixing is the practice in which the manufacturers seek to fix the minimum or maximum retail price of their products. The manufacturer may impose the retail price on the retailer or it may be a joint agreement between the two on the prices to be charged.

RPM can be detrimental to consumers as it prevents them from negotiating discounts on the price of products/services. The other concern caused by RPM is that the differences in the retail costs of various retailers are not passed to the consumer in the form of different retail prices. As a result consumers do not enjoy lower prices as this practice effectively does away with inter
brand competition. RPM may also facilitate collusion at the retail level. Owing to these, RPM is treated as a per se prohibition in some jurisdictions.

On a positive note, RPM encourages inter-brand competition, and helps overcome problems in the supply/distribution chain like free riding by retail price discounters and damaging competition between retailers located close to one another. It also assists in establishing optimal number and density of dealers and capturing economies of scale and scope in distribution.

RPM works well in markets where there is adequate and effective competition as is the case in developed countries. However, in cases where markets are highly concentrated, as is the situation in developing countries, it may not be beneficial and therefore it should be treated as a per se offence.

- **Exclusive Dealing**

In exclusive dealing, the retailer enters into an agreement with the manufacturer or wholesaler not to stock competitor products. Franchise agreements contain agreements of this nature.

Exclusive dealing is considered necessary to maintain product image, reputation and also to assure product safety, quality and availability. It also affords manufacturers the opportunity to exercise control over their distribution chains for strategic reasons.

Exclusive dealing may also be anti-competitive especially if it has market foreclosure effect. This is likely to be the case if the manufacturer entering into exclusive dealing arrangements with his dealers has a dominant position in a particular market. The market foreclosure will correspond to the degree of market share that the dominant firm has thus heightening entry barriers in that market. This problem may be severe if the dominant firm has control over essential raw materials or facilities.

- **Tying Arrangements**

Tie in sales occur when a firm or group of firms require buyers of their products to take other products which they would ordinarily not purchase. In the extreme case of full line forcing, a buyer is compelled to buy an entire product range in order to obtain the one or two that are really needed.

Suppliers may appoint exclusive dealers for their products and then insist that they stock the whole range, for example cosmetics. This affords the products effective advertising and saves customers the inconvenience of shopping around.

In certain circumstances tying arrangements may be anti-competitive, allowing a strong firm in one market to extend its economic clout to another. A classic example of a company that has been accused of using tying arrangements to consolidate its share in both the operating systems and web browser markets is Microsoft Corporation.
In Kenya this problem of tie in sales is experienced in times of shortage especially that of sugar. Traders force buyers to buy sugar say with bread and milk.

- **Territorial Exclusivity**

It occurs when a manufacturer assigns distributors exclusivity within a geographical area or over particular class of consumers or goods; e.g. newspaper distribution. In this arrangements distributor are not expected to operate outside allocated areas. The advantage with this arrangement is that retailers are able to plan on the basis of allocated sales territory. However, this may also allow retailers to exercise market power in their area of operation.

- **Quantity Forcing**

This happens when manufacturers/suppliers specify the minimum amount of goods that a distributor can buy. The manufacturer may also determine the number of orders to be received from a particular dealer.

- **Refusal to Supply**

This is the case when a manufacturer limits the number of distributors of its products.

- **Service Requirements**

In this case, a franchisor imposes on a franchisee a specified level of pre- and post- sales service or promotional effort; e.g. motor vehicle distribution.

**WHY USE VERTICAL RESTRAINTS**

a) Aid to monopoly power  
b) Foreclose rivals  
c) Efficiency  
d) Welfare enhancement

Vertical restraints are presented in the form of a principal agent relationship in which both manufacturer and retailers seek to maximize respective pay offs. The situation is characterized by problems of adverse selection, moral hazard and asymmetric information.

**Examples of cases**

**EXCLUSIVE DEALERSHIP ARRANGEMENT CASES HANDLED BY THE MONOPOLIES AND PRICES COMMISSION (MPC)**

Exclusive Dealing in the Kenyan Tobacco Industry

**The Complaint**
This case was reported in the local media in the first quarter of 1997. R J Reynolds complained that distributors and stockists of the British American Tobacco Company (BAT) were not allowed to stock its products.

The Commission contacted RJ Reynolds and found out its complaints were:

- BAT representatives and sales agents had uprooted its marketing materials including billboards and posters.
- BAT sale agents were threatening stockists.

The commission also contacted BAT representatives in the field and their response was as follows:

- BAT denied influencing distributors and stockists against selling competing brands.
- BAT had a “gentleman agreement” with its distributors to exclusively stock its products.
- Problems experienced by firms entering the Kenyan cigarette market were attributable to distributor satisfaction with BAT products.
- BAT had exclusivity over stands where its products were displayed and sold.
- Kiosk owners and other retailers were free to stock products from any company.

**Relevant Sections of the Law**

- Section 3 of the Restrictive Trade Practices, Monopolies and Price Control Act that defines what is a restrictive trade practice.
- The “gentleman’s agreement” between BAT and its distributors is captured under section 6(1)(a)(i) of the Act that list agreement hindering or preventing the sale or supply or purchase of goods or services between persons engaged in the selling or buying of goods and services as a restrictive business practice.
- Uprooting of billboards, destruction of marketing materials and threatening of distributors falls under section 10(1)(a) which declares acts meant to drive a competitor out of business or to deter a person from establishing business in Kenya as predatory trade practices.

**The Tobacco Industry**

In 1997, there were three main firms dealing in tobacco products in Kenya viz. BAT, Mastermind Tobacco (K) Ltd (Mastermind) and RJ Reynolds.

BAT is a multinational firm, which started operations in Kenya in 1907. The company command over 80% of the local cigarette market and has over 50 distributors, over 1000 wholesalers and over 40,000 distributors spread over the whole country. BAT has over the years used its market dominance to frustrate new entrants into the Kenyan tobacco leaf and cigarette market through vertical restraints.

Mastermind is an indigenously owned company and started its manufacturing operations in 1989. It was the first major company to compete with BAT in the tobacco leaf and cigarette market. The company encounters stiff competition from BAT and sometimes it is unfair. Despite this the companies has managed to capture over ten percent of the Kenyan cigarette market.
RJ Reynolds is an International Company that entered the Kenyan Market in 1996. It was dealing with an imported cigarette brand – Aspen. The company operated in Kenya for a short while and left.

The two remaining companies (BAT and Mastermind) are vertically integrated i.e. operate at three levels viz. tobacco growing, processing, manufacture of cigarettes and distribution. Any company intending to successfully enter the Kenyan tobacco industry would have to do so at the three levels.

**Investigations**

Investigations carried out by the Commission established that 1) Sales people of BAT had removed posters and billboards of R J Reynolds; 2) they had threatened and cautioned distributors stocking competitor products, 3) BAT has exclusive dealing arrangements with its distributors, 4) BAT had actually stopped supplying its cigarette products to those who stocked Aspen brand of Cigarette. The Commission considered these to be restrictive trade practices as outlined in the Kenyan competition law.

However, before the Commission could invoke section 15 of the Act, which empowers the Commissioner to ask firms alleged to have committed restrictive trade practices to comment on the allegations and propose appropriate remedial measures to align their conduct with the Act, the managing director of RJ Reynolds informed the Commissions that BAT had ceased its unfair business practices. In the circumstances, the case was terminated.

This case was a clear example of how dominant firms use vertical restraints to block new entrants into a market.

**Coca Cola Company and its distributors**

The company restricted the latter from dealing in competitor products. This was exemplified in the case between Minmey Enterprises and Equator Bottlers Limited (EBL). Though competition concerns were raised, MPC ruled that the Agreement be upheld because EBL had invested substantial capital in the promotion and advertisement of its products which other beverage companies wanted to “free ride” on.

**Kenya Breweries and its distributors** which compels the latter not to stock liquor from competing firms. A related case was that between KBL and Castle Breweries where KBL contracted farmers were restricted from selling their barley to Castle Breweries. KBL had even gone ahead to patent the barley strain.

**Multinational oil companies and their retail outlets**

In this case we find that retailers for Caltex, Shell and BP, Mobil or Total can only purchase their fuel requirements from their respective parent companies and cannot buy petrol from a rival company. Currently there is a price crisis that MPC suspects may result from cartelization of the
industry as indicated by circumstantial evidence.. The five big players in the market may be colluding on prices.

**Mumias Sugar Company and its Distributors**

The situation reflects what has been discussed above

**British America Tobacco (BAT) and Mastermind Tobacco (K) Limited.**

In this case, cigarette dispensers belonging to MTK were removed from Total Petrol station convenience stores because BAT had entered into an exclusive arrangement with Total advising it not to deal in competing brands of cigarettes.

**Mastermind Tobacco and KK Security Guards**

KK security Guards cancelled a security contract with Mastermind because of the new contract it had secured with Kenya Breweries. In the said contract, there existed a clause that restricted KK from dealing with a competitor in matters relating to security provision.

**BEER SECTOR**

**Introduction**

The beer industry is dominated by Kenya Breweries Limited. The company was set up in 1922 and is the local subsidiary of East Africa Breweries Limited. It has presence in Tanzania, Uganda and Central Africa.

Past industry participants in the beer market include Castle Breweries, which exited the market after a 5-year stint between 1998 and 2002, Taylor’s Brewery, which left in 1937, Allsopps (EA) Ltd and City Breweries Limited.

KBL has one production facility in Nairobi. The Kisumu plant, which served the Western region, was shut down in order to consolidate production activities and facilitate the expansion activities at the Nairobi plant.

The company has contracted Tibbett & Britten Kenya Limited and Express Kenya Limited to handle warehousing and distribution logistics. These distributors serve exclusive zones that have been allocated to them by the Company. The same arrangement is replicated in the wholesale and stockist distribution system where the distributors are assigned sales territories..

The alcohol market is a major source of tax revenue. In 2007, alcohol contributed 25% of excise revenue and 5% of total custom revenue collected by Kenya Revenue Authority. A common feature of this sector is heavy advertisements and a wide product portfolio that corresponds to the diverse tastes and preferences of consumers.

**Current state of competition**

Beer accounts for an estimated 78% of the total volume of alcohol consumed in Kenya. The sector has sustained its growth by taking away the market shares of wines and spirits producers.
such Mohan Meakin, London Distillers and Keroche Industries. These wines and spirits producers, perhaps fearing the financial might of Kenya Breweries, have tended to concentrate on production for the low-end market. For example, Senator, which is a Kenya Breweries brand, was introduced as a budget brand to fight off Keroche’s fortified wines and spirits. Last year (2007), Kenya Breweries raided the soft drinks market through the launch of Alvaro.

As indicated, the Beer market has a long-term pattern of high market concentration. This state of affairs is attributed to a number of factors:

- The inability of Castle Breweries to penetrate the Kenyan market because they were unable to contract farmers due Kenya Breweries claimed plant breeders’ rights over the locally available barley varieties. Import duty on imported barley was also increased.

- Kenya Breweries has a large product portfolio which includes various brands of beer (both stout and lagers). It also has sole distributorship of Heineken, an imported brand in Kenya and it would thus require a credible competitor with equal strength to successfully create a niche for itself. Castle Breweries would have done it had it not been for what Monopolies and Prices Commission perceived to have been market sharing i.e. Kenya Breweries withdrew from the Tanzanian market in return for the entire Kenyan market.

In terms of pricing, the Kenya Breweries products are priced in tandem with the fiscal measures imposed on them by the Treasury. In other words, increase in taxation automatically lead to upward price adjustments. While the Brewery controls wholesale prices, retail prices differ from one point of sale to another.

**Competition concerns**

The most significant source of competition concern in this sector arises from the vertically integrated nature of the industry. Barley farmers, the bottles manufacturer as well as the distributors and transporters for the Brewery have entered into contracts that obligate them to observe certain specific requirements that may be deemed to be anti competitive. These include clauses on retail price maintenance, exclusive dealing and market allocation.

In the recent past, the Brewery has been reportedly engaged in acts that constitute abuse of dominance. For example, in 2003 Keroche Industries complained of harassment of its distributors including bars and unfair treatment from the Provincial Administration who had declined to issue liquor licenses to liquor premises selling Keroche’s products.

The perceived market sharing between Castle and Kenya Breweries also deters competition between the two brands since at the moment both companies distribute each others products.

Kenya Breweries has a lot of idle capacity at the Castle Breweries plant in Thika which it acquired but which it has never utilized since the takeover in 2002. This may be perceived to be a weapon for use in case of new entry.
CEMENT INDUSTRY

Introduction
Cement is an important ingredient in the construction industry and is often referred to as a barometer of the economic activities in the development of the economy. Cement consumption in Kenya rose by 8.7% from 2,405.9 thousand tonnes in 2006 to 2,615.1 thousand tonnes in 2007\(^1\). This growth was attributed to a growing demand for cement locally and regionally and the booming building and construction sub-sector.

Kenya has three cement manufacturers:

1. **Bamburi Cement Limited (BCL).**

BCL was founded in 1951 as a subsidiary of Cementia Holding A. G. Zurich. Later, Blue Circle Plc. (UK) bought 37% shares in BCL and became business partners with Cementia. In 1989 Lafarge (founded in 1933) acquired Cementia and became joint owners of BCL with Blue Circle Plc. In July 2001, Lafarge wholly acquired Blue Circle Plc and became the controlling shareholder of BCL and largest building materials company in the world.

The first plant started operations in 1954 with annual capacity of 140,000 metric tones of cement per annum. The company has total production capacity of 2.3 million tonnes, but currently has installed capacity of about 2 million metric tonnes per annum. BCL’s market share in 2007 was 60% up from 57% in the year 2004. ‘Nguvu’ is BCL’s main cement brand within their brand portfolio.

The current shareholders of the company are Fincem Holdings Limited (Lafarge) – 29.3%, Kencem Holding Limited (Lafarge)- 29.3%, NSSF (16.68%), Bamcem Holding Limited (Lafarge)- 13.78% and Others (10.94%).

Lafarge has 16 cement manufacturing plants in Africa; Nigeria – 3, Morocco- 3, Egypt – 2, Kenya –1, Uganda – 1, Tanzania –1, South Africa – 1, Zambia –2, Zimbabwe –1 and Cameroon –1.

2. **East African Portland Cement Company Limited (EAPCC)**

EAPCC was incorporated in Kenya in 1933 as a trading company importing cement mainly from England for early construction in East Africa. It started manufacturing in Kenya in 1958 with a production capacity of 120,000 tonnes of cement per annum. The current installed capacity is about 720, 000 metric tonnes per annum. EAPCC is the second largest cement company with a market share of 31% (2007) down from 37% in 2004. Management rows, logistical issues and poor marketing strategies by the company explains the decline in market shares.

\(^1\) Economic survey, 2008
The current shareholders of the company are NSSF (27%), GOK (25%), Cementia- Lafarge (14.6%), BCI- Lafarge (14.6%), Bamburi nominees- Lafarge (12.5%) and Others (6.3%). They have seven directors, two of whom are Lafarge appointees.

EAPCC’s cement brand name is ‘Blue Triangle’

3. **Athi River Mining Company (ARM)**

ARM is a local public limited company, which started producing cement in 1985, though the company started its operations in 1973. They have two manufacturing plants- one located in Kaloleni, Mombasa (Cement) and the other one in Athi River, Machakos District (Minerals). ARM also has a plant in Tanzania manufacturing chemical products (Lime) and plants in South Africa and Zambia manufacturing Sodium Silicate. It started cement production in 1985 with a capacity of 100,000 metric tones, which has been elevated to 250,000 metric tones currently.

The shareholders of the company are foreign investors (4%), Local individual investors (66.1%) and Local Institution investors (29.9%). A point to note is that BCL as a local institution investor holds 15.17% shares in ARM. Originally BCL had acquired 19% shareholding (2001) in ARM, but disposed off 3.83% through the Nairobi Stock Exchange to different individuals. To date ARM has 9% market share up from 6% in 2004, and its cement’s brand name is ‘Rhino’.

It is important to also note that Kenya imports cement in small quantities, as the export potential is limited by logistics taking into account that cement is a bulky product.

**Competition status in the Cement industry**

Competition in the cement industry is not effective due to the following reasons:

- **BCL is a dominant player** - BCL has dominant economic power as it controls 60% of the domestic cement market, and therefore may exercise control over the prevailing prices of cement in the economy. BCL and EAPCC control a combined domestic market share of 91%.

- **Shareholding** - A French group, Lafarge, dominates the cement industry in Kenya. It is the majority shareholder in BCL with a shareholding of 73%. It also has a shareholding of 41.7% and 15% in EAPCC and ARM respectively. By virtue of Lafarge’s shareholding in all the cement-manufacturing firms, the company has the capacity to unduly influence the market to the potential detriment of competitors and consumers of cement. For example when the Board of ARM decided to expand its clinker capacity, BCL, in its capacity as a shareholder, opposed the move on grounds that at that time the clinker capacity in the country was sufficient for at least 6-7 years. At this time ARM and EAPCC did not have sufficient capacity. It therefore appears that BCL only wanted its competitors to continue buying clinker from them, which is a harmful scenario since clinker prices might be inflated to the competitors making their prices high.

- **Cross-directorship by BCL** - The Lafarge group sits in the board of directors of its two weak competitors. Cross directorship does not create a level playing field since there is lack of exclusivity of information among the three firms and none of the three firms can
formulate strategy on their own due to likelihood of information transfer from one firm to the other. BCL, which sits in their board, is in a position to access their business strategies, and this stifles competition. For example when ARM got the license from the local council in Kitui to mine limestone, one of the raw materials used in making cement, BCL also went ahead to get the Exclusive Prospectus License from the mining department to do the same. Conflicts arose between them, as BCL claimed that they had the exclusive license, and ARM claimed that this was a common mineral that did not require an exclusive license. The Council later granted leases to both companies, but the matter has now moved to court.

However, it’s important to note that

- After enjoying a long history of protection, the Kenya cement industry may experience increased competition from low cost importers. This has arisen from a decision by the Finance Minister to reduce the import duty on cement from 40% to 25%, in order to enhance local capacity and reduce supply side constraints. This will make cement especially from China and India more affordable, as this may translate into low consumer prices. Cement retail prices have been steadily going up considering that in 2004 a 50kg bag of cement was retailing at between Kshs 420 and 450. To date a 50kg bag is retailing at between Kshs 700 and 720.
- It is anticipated that competition in the cement sector will be enhanced once a new cement factory being built by Chinese investors in Kenya is complete and operational. Its importation of clinker from China is likely to give it leverage in the market, setting off price wars with the established cement manufacturers. ARM is also planning to increase its capacity by building a new plant by 2012, which is expected to churn out 2 million tonnes of cement per annum.
- The cement companies are addressing issues of high fuel costs by trying to configure their manufacturing plants to be able to access coal as an alternative, and this may lower the prices. Concessions on power tariffs are also given to the commercial industries that produce at night when general consumption is low.

**Competition concerns in the cement industry**

- Under the distributorship structure, BCL has been found to have exclusive agreements with their appointed distributors. These agreements have exclusive clauses, which do not allow their distributors to deal with the competitor/s brands. This limits consumers’ choice.
- Unwarranted concentration of economic power. An example is when the Minister for Finance directed the Commissioner to investigate the cement sector of the Kenyan economy, as he believed the sector would feature one or more factors related to unwarranted concentration of economic power. Under section 23 of the Restrictive trade Practices, Monopolies and Price Control Act, Cap 504 of the Laws of Kenya, the Minister for Finance is expected to keep the structure of production and distribution of goods and services in Kenya under review to determine where concentration of economic power exists whose detrimental impact on the economy outweighs the efficiency

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2 Budget Speech, 2008
advantage.

- Merger proposals by BCL to the government to consolidate their interests by acquiring an existing cement firm. Any proposed merger with BCL in Kenya is undesirable because it is a dominant firm and may restrict supply and charge higher prices that are detrimental to consumers.

**Conclusion**
The Cement industry in Kenya is concentrated and cement, has no substitute. Therefore, there is need to keep the structure of cement market efficient and competitive. For this to happen, the current three cement manufacturers need to continue operating separately. The government also has the mandate to ensure that BCL divests from both EAPCC and ARM, even as new firms are encouraged to enter the Kenyan cement market.

**Competition in the mobile telephony sector**
Mobile telephone services were introduced in Kenya in 1992. During this entry period the services were limited and so expensive that only a few people within the upper echelon of the society could afford them. The cost of owning a mobile handset was as high as Kshs 250,000. This resulted in marginal mobile subscriber growth of less than 20,000 for the period 1993 - 1999. However with the establishment of the Communication Commission of Kenya (CCK) in 1999, based on the Kenya Communications Act, 1998, the level of competition in the cellular mobile industry increased.

In line with the global trends, Mobile telephony network has witnessed phenomenal growth with the number of subscribers base rising from 7,340,000 in 2006 to 11,440,000 in 2007\(^3\) (55.9% increase) in a population of 35 million people, up from 15,000 at the start of liberalization in 1999. The mobile signal geographically, now covers 80% of the country.

Safaricom Ltd and Celtel Kenya are the two main mobile service providers in Kenya. Safaricom dominates the market with 80% market share (9.2 million subscribers), while Celtel has 20% (2.2 million subscribers). Telkom Kenya has a small market share with its CDMA (Code Division Multiple Access) technology, and has yet to launch GSM (Global System for Mobile Communications) service. Econet wireless is expected to roll out operations before end of 2008. It is anticipated that the entry of these two additional players will enhance competition in the sector leading to price reduction and empowering consumers with more choice.

Both Celtel and Safaricom have been known as ‘enemies’ as they fight to win subscribers by diversifying their products and services and also through price wars. These have resulted in reduction of calling charges and high consumer access, hence enhancing competition.

Mobile phones provide new products for example text messages, billing services, information services, roaming services, free customer care access, internet services, flashback services, loyalty schemes (Bonga points) weather updates, market prices, entertainment updates, etc.

\(^{3}\) Economic survey, 2008
Competition in the mobile sector has enabled mobile operators in Kenyan to offer services conveniently and at more affordable costs through community payphones e.g. through Simu ya Jamii (Safaricom) and Simu Yetu (Celtel).

Mobile providers offer cash transfer services (M-Pesa and Sokotele by Safaricom and Celtel respectively). Both services enable subscribers to send or receive money using their cell phones.

The mobile providers offer basket of tariffs to consumers and this gives them freedom to change tariffs and choose the tariff plan depending on their lifestyles. Currently Safaricom has Saasa tariff plan that has low off-peak of Ksh 8 per minute and Ongea tariff with Ksh 10 all day, all night everyday. Celtel has Pamoja tariff that charges Ksh 7 peak hours and Ksh 3 off-peak and weekends.

Celtel has also launched bundled minutes, whereby postpaid users will receive a certain free amount of talk-time every month, which amounts to a price discount. The company has also extended its successful strategy of providing users with the ability to enjoy lower tariffs (Ksh 4) for preferred numbers (commonly used), which has seen it win 30% increase in new customers.

The providers are also diversifying beyond their tradition mobile voice services to offer integrated voice and data. Safaricom has launched the mobile television service.

To enhance competition and create diversity in the provision of international links, Safaricom and Celtel were granted the international voice gateway license in June, 2006. As a result, the two operators have been able to reduce the charges for international calls. This reduction lowered the cost of doing business in Kenya particularly for firms dealing in international business.

CCK has acquired call monitoring equipment called Quality of Service Monitoring System (QSMS) to enable them to conduct independent verification of the quality of service performance for local mobile telephone calls instead of relying on the compliance returns filed by licensees.

CCK has a Consumer Affairs Division to protect consumers against unfair and deceptive practices and to offer guidance.

**Competition concerns:**
- High interconnection charges/ termination charges: Calls within the networks remain relatively cheap compared to calls from one network to another, with each provider refusing to lower cross-network call charges. Safaricom charges between Kshs. 8 – 14 per minute for internal calls, compared to Kshs. 20-30 per minute across network calls. Celtel on the other hand, charges Kshs. 3-14 per minute for internal calls compared to Kshs. 14-24 for cross network depending on whether the call is made peak or off-peak times. As the market forces continue to regulate the mobile market, subscribers need to invest in duo-SIM phones to take advantage of offers from the two companies.
- Alleged predatory practices – The free night calls offered by the mobile providers upon topping up with Kshs. 100 or Kshs. 99 per day, under the cover of promotion campaigns, is offered at prices below average variable costs of the individual calls.
Conclusion
Mobile telephony in Kenya is widely considered to be competitive in Kenya as call prices are low based on per-second billing and consumers are benefiting from a wide choice of tariffs. It is hoped with the rollout by Telkom and Econet, competition will be more efficient.

CONCLUSION

From the foregoing it has emerged that vertical restraints may be harmful in certain circumstances and beneficial in others. As such, a good competition law should be able to address these two concerns i.e. discourage harmful restraints and allow those likely to bring a net public benefit.