Addis Ababa University College of Law and Governance Studies

Enforcing the Unfair Trade Practice Rules of Ethiopia's Competition Law on E-commerce: The Practice and the Challenge

By: Gebeyehu Masrie

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Addis Ababa University College of Law and Governance Studies

Enforcing the Unfair Trade Practice Rules of Ethiopia's Competition Law on E-commerce: The Practice and the Challenge

A Thesis Submitted to College of Law and Governance Studies, Addis Ababa University, in Partial Fulfilment of the Requirements for the Degree of Master of Law (LL.M) in Business Law

By: Gebeyehu Masrie

Advisor:

Solomon Abay (PhD), Associate Professor, School of Law, CLGS,

Associate Dean for Graduate Programs, CLGS,

Addis Ababa University.

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The thesis titled ‘‘**Enforcing the Unfair Trade Practice Rules of Ethiopia’s Competition Law on E commerce: The Practice and the Challenge’’** the Master of Law (LL.M) thesis authored by Gebeyehu Masrie has been officially approved

The panel of examiners

	Name	Signature
Examiners:	**1. Dr Kinfe Yilma**	____________
	2. Martha Belete	____________
Advisor:	**Solomon Abay (PhD)**	____________

Date: 30 November 2023

Declaration

I declare that the work titled "Enforcing the Unfair Trade Practice Rules of Ethiopia's Competition Law on E-commerce: The Practice and the Challenge" is my own effort and study. I have properly acknowledged all sources used in this study. I received guidance and suggestions from my research advisor, Solomon Abay (PhD), but the work was produced independently. This study has not been pursued as part of any degree program in this or any other university. It is submitted as partial fulfillment for the degree of Master of Law (LL.M).

Name: Gebeyehu Masrie

Signature: ____________

Date: 30 November 2023

As a university advisor, I submit this assertion for examination with my full approval.

Name: Solomon Abay (PhD)

Signature: _____________

Date: 30 November 2023

Acknowledgment

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Key Terms

Key Terms in this Paper are:

- *Unfair competition*
- *Electronic commerce*
- *Flash crash*
- *Unrepresentative pricing*
- *Failure/refusal to submit orders*
- *Pace making*
- *Marking the closing price*
- *Cornering and dumping*
- *Matching orders*
- *Trading sessions*

List of acronyms/abbreviations:

- *AUA - Anticompetitive Unilateral Acts*
- *Art - Article*
- *Neg Gaz. - Negarit Gazeta*
- *Civ. C - Ethiopian Civil Code*
- *Comm. C - Ethiopian Commercial Code*
- *WIPO - World Intellectual Property Organization*
- *Rev - Revision*
- *ETCCPA – Ethiopian Trade Competition and Consumer Protection Authority*
- *FDRE – Federal Democratic Republic of Ethiopia*
- *Proc. No - Proclamation Number*
- *IP - Intellectual Property*
- *OECD - Organization for Economic Cooperation and Development*
- *UNCTAD - United Nations Conference on Trade and Development*
- *ECX - Ethiopian Products Exchange*
- *EU - European Union*

Abstract

This research focuses on examining the adequacy of Ethiopian laws in addressing competition issues within emerging e-commerce marketplaces, with a specific emphasis on unilateral anticompetitive acts. Notwithstanding the recent initiatives and measures taken to foster a free market economy and encourage private sector participation in Ethiopia, the current legal frameworks do not adequately tackle the complexities and challenges arising from the expansion of e-commerce.

The study investigates the extent to which current and developing competition laws and institutional frameworks in Ethiopia effectively tackle common unilateral anticompetitive practices within the realm of e-commerce. It argues that the existing competition legislation falls short in adequately addressing issues such as flash crash, cornering or dumping, unrepresentative pricing, failure or refusal to submit trade orders, pace making, marking the closing price, and matching orders.

The research reveals that the current legal framework lacks provisions specifically tailored to e-commerce marketplaces, particularly in relation to unilateral anticompetitive acts, thereby failing to adequately address the intricacies of competition in this domain. Moreover, it highlights the limited attention given to non-economic factors and implicit anticompetitive conduct within Ethiopian competition law.

This thesis aims to shed light on the practices and challenges within existing laws while providing insights into the necessary legal and institutional reforms required for the effective regulation of competition, with a specific focus on unilateral anticompetitive acts, in Ethiopia's emerging e-commerce marketplaces.

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Chapter one

Introduction

1.1. Background

Competition[1],law (also referred to as "antitrust law ")[2] is a law that aims to foster and preserve market competition by regulating anti-competitive practices of companies through both public and private enforcement mechanisms.[3] Competition law applies to both competitive trading activities and anti-competitive trading activities.

The 1889 Canadian "Competition Law" and the 1890 American "Sherman Act" stand as the pioneering competition laws of the twentieth century.[4] Recent studies indicate that anticompetitive trading practices can be broadly classified into four main categories.

1. Anticompetitive agreement: This includes any agreement between competitors to fix prices, divide markets, or rig bids. Such agreements can have the effect of reducing competition and increasing prices for consumers.
2. Abuse of dominance: This refers to a situation where a dominant firm engages in anticompetitive behavior to maintain or extend its dominance in the market. Examples of such behavior include predatory pricing, tying, and exclusive dealing.
3. Anticompetitive merger: When firms merge, it can lead to a reduction in competition and an increase in prices for consumers. This can occur when the merger results in a high

[1] Competition can be defined as "a situation in market-oriented economies by which firms or sellers independently strive for buyers' patronage; providing competitive price, quality, quantity or service which will hopefully result a better profit, sales, market share etc." (World Bank and OECD, Framework for the Design and Implementation of Competition Law and Policy, 1999, p.1. Hereinafter referred to as 'World Bank and OECD')

[2] Competition Policy: History Objective and the Law: http://www.cea.fi/course/textbook/chapter_1.pdf (Last accessed on February 07, 2023)

[3] https://www.mcgill.ca/iasl/files/iasl/aspl614-competition_and_antitrust-laws.pdf (Last accessed on February 06, 2023)

[4] Hoffman, C. P. (2013). A Reappraisal of a Canadian Anti-combines Act of 1889. Queen's Law Journal, 28-30. (Hereinafter cited as 'A Reappraisal of a Canadian Anti-combines Act of 1889')

market share or when the merged firm has the ability to foreclose competitors from the market.[5]

4. Anticompetitive unilateral acts: This includes any action taken by a firm that has the effect of reducing competition and harming consumers. Examples of such acts include Flash crashing, dumping, cornering etc.[6]

Ethiopia enacted its first two competition laws in 1963 and 1965, known as Trade Practice Decree No. 501/1963 and Trade Practice Proclamation No. 228/1965 respectively. During the period from 1975 to 1991, these laws witnessed a decline in their effectiveness due to the country's implementation of a central planning economic policy.[7]

Over the past few years, Ethiopia has witnessed a surge in the establishment of various e-commerce marketplaces. Recent data indicates that the number of operational e-commerce platforms in Ethiopia has surpassed 29, showcasing the growing presence of digital marketplaces in the country.[8]

In addition to the burgeoning e-commerce market in Ethiopia, a significant development took place with the Ethiopian government entered into a Memorandum of Understanding (MoU) with Alibaba, a leading Chinese e-commerce giant. This strategic partnership aims to establish the Electronic World Trade Platform (eWTP) in Ethiopia, marking a notable step forward in advancing digital trade and cross-border e-commerce opportunities in the country.[9]

To further solidify such initiatives, different pieces of legislation are already enacted or are before the legislature. One is the E-transaction Proclamation which is promulgated to, inter alia, provide a sound legal framework for the mushrooming e-commerce market in the country.[10] The National Bank of Ethiopia has taken proactive measures to ensure the safety, efficiency, and user protection

[5] World Bank and OECD cited above at note 1, pp. 19, 59, 69 and 141.

[6] Id . World Bank and OECD, pp. 141

[7] Elias N. Stebek, "Deliverables and Pledges under Ethiopian Trade Competition Law: The Need for Private Sector Empowerment and Enablement," Mizan Law Review, Vol. 11, No. 1, pp. 32–33. (Available at: https://www.ajol.info/index.php/mlr/article/view/161602

[8] Ministry of Innovation and Technology. (2020). Operational Readiness Document.

[9] Alibaba Group to Establish an eWTP Hub in Ethiopia (Office of the Prime Minister of Ethiopia, December 02, 2019), available at: https://pmo.gov.et/news/; see also Alibaba, Ethiopia sign MoU on creation of an Electronic World Trade Platform (CGTN Africa, 26 November 2019) https://bit.ly/2FexuZG (Last accessed 7 September 2020).

[10] Electronic Transaction Proclamation No. 1205/2020, Federal Negarit Gazeta

within the payment system while also encouraging the widespread adoption of financial services. Regarding this matter, the bank has issued Directive No. ONPS/01l2020, which is recognized as the Licensing and Authorization of Payment Instrument Issuers Directive. This directive aims to regulate payment instrument issuers, promoting secure and reliable payment transactions in line with evolving e-commerce practices. It is crucial to consider competition regulation issues in the context of e-commerce within the wider framework of legislative measures and other government initiatives aimed at creating a favorable environment for digital commerce.

Ethiopia's current competition rules are contained in a broader legislation that regulates consumer protection as well as market competition. But other laws also carry some competition-related rules.[11] Apart from the principal competition legislation, which is the Trade Competition and Consumers Protection Proclamation No. 813/2013, there are additional subsidiary legal instruments in place. One is the Merger Directive No.1/2016, adopted by Minister of Trade and Industry. In the past few years, a number of relevant bills have been prepared by different government departments.[12]

Although the Trade Competition Proclamation No. 813/2013 constitutes a considerable improvement over its predecessors,[13] it still exhibits certain limitations when it comes to effectively regulating contemporary issues of competition regulation. The rise of e-commerce marketplaces has brought forth unique competition challenges, particularly concerning non-price and tacit competition. Given these challenges, the primary objective of this article is to evaluate the sufficiency of current Ethiopian laws in dealing with the emerging competition issues that

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[11] See, e.g., Civil Code of Ethiopia Proclamation No. 165/1960, Negarit Gazeta, Art 2057; Commercial Code of Ethiopia Proclamation No. 166/1960, Negarit Gazeta, Arts 133, 134(1-2); Communication Services Proclamation No. 1148/2019, Federal Negarit Gazeta, Arts 47-48.

[12] Pieces of legislation under drafting process at the time of writing are: Trade Competition and Consumer Protection Proclamation (hereinafter 'Draft Trade Competition Proclamation'), Trade Competition and Consumer Protection Regulation of Council of Ministers (hereinafter 'Draft Trade Competition Regulation', Directive to Provide for the Assessment of Relevant Market Provisions of ETCCPA (hereinafter 'Draft Relevant Market Directive'), Directive on Implementation of Public Interest Provisions of ETCCPA (hereinafter 'Draft Public Interest Directive'), Directive on Implementation of Anti-competitive Agreements Provisions of Ministry of Trade and Industry (hereinafter 'Draft Anti-competitive Agreements Directive'), Directive on Implementation of Abuse of Dominance Provisions of Ministry of Trade and Industry (hereinafter 'Draft Abuse of Dominance Directive') and Directive to Amend the Merger Directive of Ministry of Trade and Industry (hereinafter 'Draft Merger Directive').

[13] A Review of Competition Policy in Ethiopia (UNCTAD, 2018) viii.

have surfaced within the growing e-commerce sector. The article argues that although the Competition Proclamation and related bills do address anti-competitive practices to some extent, there are still limitations in effectively capturing non-price competition concerns and other forms of tacit anti-competitive behavior.

In Ethiopia, in the year 2020, significant growth of internet users was registered within 10 years. Statistics of the year 2000 show that there used to be 10,000 internet users but in just 10 years, it reached 20,507,255 users showing significant growth of 204.97%. But out of the whole population of Ethiopia, only 17.8% use the internet. Out of the people who are using the internet. Because people who own smartphones have exceedingly skyrocketed, dozens of payment systems like YenePay, Hello Cash, Amole, Tele Birr, E-Birr, and CBE Birr have been made available to the masses over the past couple of years.[14] Since their official launch, electronic marketplaces in Ethiopia have faced multiple instances of anticompetitive trading practices, including Anticompetitive Unilateral Acts.[15]

The trust and security of online commerce are crucial considerations for businesses when engaging in electronic transactions within the existing legal framework. To address this concern, the use of electronic signatures has emerged as a viable solution, leveraging technology to facilitate the acquisition of user signatures on important documents. Electronic signatures play a significant role in both national and international commerce, with numerous companies relying on e-signature technology for their daily business transactions. If a government fails to provide assurances regarding the legality and validity of electronic contracts and online transactions, it could impede the progress of e-commerce. Consequently, lawmakers in many countries prioritize enacting national e-signature legislation to establish a legal framework that instills confidence in electronic commerce.

In Ethiopia, legislation pertaining to e-commerce, including privacy protection and electronic signatures, has already been implemented.

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[14] E-commerce in Ethiopia: a luxury or a necessity [2022] (Available at : https://www.linkedin.com/pulse/e-commerce-ethiopia-luxury-necessity-2022-mt-freelance/)

[15] Interview with Amanuel Chala, Director of Electronic Commerce and IT division at Purposeblack Ethiopia, January 25, 2023. [Hereinafter cited as 'Interview with Amanuel Chala, Director of Electronic Commerce and IT division'].

1.2. Statement of the Problem

In response to various challenges and dedicated efforts to create a comprehensive competition law, the Trade Competition and Consumer Protection Proclamation of 2013 was formulated to target the four mentioned categories of anticompetitive practices.[16] The provision in Article 8 of the Trade Competition and Consumer Protection proclamation emerges as the most pertinent one, as it directly addresses the concept of "Unfair Competition" and closely aligns with Anticompetitive Unilateral Acts. The other portions/sections of the proclamation are explicitly designed to address issues related to Unfair Competition, Anticompetitive Mergers, and the Abuse of Dominant Market Position.[17] Regrettably, the proclamation does not include a precise and explicit definition of the term "Unfair Competition."

However, it does include a provision that prohibits businesspersons from engaging in dishonest, misleading, deceptive acts that could harm or potentially harm the business interests of their competitors during the course of trade.[18] Sub-article 2 of Article 8 of the same proclamation enumerates acts that would be deemed as qualifying for unfair competition as; (1) Causing confusion with other businesses or activities of other business persons, (2) Possession/disclosure/use of information another business without the latter's consent and contrary to honest trade practice, (3) False/unjustifiable allegations, (4) Comparing goods falsely/equivocally while advertising, (5) Disseminating false/equivocal information to consumers, and (6) Obtaining/attempting to obtain confidential business information of other business persons without their consent, etc. are listed as unfair competition acts.[19]

Upon careful review of the mentioned listing, it is reasonable to question whether the listed items truly represent anticompetitive unilateral acts that hinder competition or if they primarily consist of intellectual property-related rules aimed at safeguarding the reputation and goodwill of businesses.

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[16] Trade Competition and Consumers Protection Proclamation, 2013, Articles 5, 7, 8, and 9 of Proclamation No. 813/2013. [Hereinafter referred to as Proclamation No. 813/2013].

[17] Ibid.

[18] Id . Art. 8 (1) of the Proclamation No. 8 13/20 13.

[19] Id. Art. 8 (2) Proclamation No. 813/2013

Interestingly, the Civil Code takes an approach to address the concept of "unfair competition" as a fault-based offense outside of contractual obligations. It defines unfair competition as an act where an individual, through false publication or any other means contrary to good faith, undermines the reputation of a product or the credibility of a commercial establishment.[20] The Civil Code also recognizes the provision of false information as a fault-based offense. Consequently, one can draw a parallel and infer that this rule, with appropriate modifications, may be applicable to business transactions as well.[21]

Similar to Proclamation No. 813/2013, the Commercial Code also defines 'unfair competition' as acts of competition that go against honest commercial practices. It encompasses two main aspects: (1) engaging in acts that have the potential to deceive customers regarding the offerings, products, or commercial activities of competitors, and (2) making false statements during business transactions with the intention to discredit the undertaking, product, or commercial activity of competitors.[22]

The similarities observed between Proclamation No. 813/2013, the Civil Code, and the Commercial Code regarding the concept of 'unfair competition' suggest that the proclamation primarily incorporates existing regulations related to intellectual property and business goodwill, rather than providing distinct provisions specifically targeting anticompetitive unilateral acts. Consequently, the lack of a clear definition for "unfair competition" in the proclamation has led to systematic occurrences of Anticompetitive Unilateral Acts within the Ethiopian Electronic Commerce system, which are not explicitly addressed by the current competition law in the country.

With the emergence of the Electronic commerce in the country as a whole, various instances of anticompetitive unilateral acts have begun to manifest. These acts predominantly involve transactions, pricing, trade order submissions, and the authenticity of the submitted orders, among other related aspects.[23]

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[20] Civ. c., Art. 2057

[21] Id . Art . 2059

[22] Comm. C. Art. 133

[23] Andavar, V., Sundaram, B. B., & Sownjanya. (2018). Opportunities and Challenges of E-Commerce in the Case of Ethiopia (pp. 51-52). Accessed at (file:///C:/Users/GebeyehuM/Downloads/OpportunitiesandChallengesofE-CommerceintheCaseofEthiopia%20(4).pdf)

It would be challenging to assert that Proc. No. 813/2013, particularly its 'unfair competition' rules, adequately addresses the aforementioned anticompetitive unilateral acts. These acts go beyond mere attacks on business persons' goodwill, intellectual property rights, or false advertisements. Their impact extends beyond competitors, potentially affecting the integrity of the market, product prices, interests of online buyers and suppliers, especially those reliant solely on Electronic Commerce platforms for trading commodities.[24]

The subsequent unilateral acts are regarded as Unilateral Anticompetitive acts in Electronic commerce.

Flash Crashing[25]: A flash crash is characterized by a sudden and significant decrease in the value of securities or commodities, swiftly followed by a rapid recovery within a short timeframe, usually minutes. These sharp market fluctuations can be initiated by a range of factors, including algorithmic trading, technical malfunctions, or unexpected news events.

Flash crashes in e-commerce can have various causes, including:

1. **Computer algorithms:** Trading algorithms can be programmed to automatically sell off assets when a certain price level is reached. If multiple algorithms sell at the same time, it can trigger a sudden price drop.
2. **Technical glitches:** Technical issues with trading systems can also cause flash crashes. For example, a glitch in the system may cause orders to be executed at prices far below the current market value.
3. **Human error:** Mistakes made by traders or other market participants can also trigger flash crashes. For instance, a trader may enter the wrong order or a large sell order may be placed in error.

[24] Ibid.

[25] Kirilenko, A., Samadi, M., Kyle, A. S., & Tuzun, T. (2011). The Flash Crash: The Impact of High Frequency Trading on an Electronic Market (pp. 9-12). In Proceedings of the 22nd Annual Conference on Financial Economics and Accounting. Available at: https://cap.columbia.edu/sites/default/files/content/Documents/11 1910/The%20Flash%20Crash %20The%20Impact%20of%20High%20Frequency%20Trading%20on%20an%20Electronic%20Market.pdf

4. **Market sentiment:** The overall sentiment of the market can also play a role in flash crashes. If investors suddenly become fearful or uncertain about the future, they may panic sell their assets, causing prices to plummet.

One of the most well-known examples of a flash crash occurred on May 6, 2010, in the US stock market. The Dow Jones Industrial Average (DJIA) lost nearly 1,000 points in just a few minutes, which was the largest intraday point decline in its history. The market recovered most of its losses within the next hour, but the incident raised concerns about the stability of Electronic commerce's. Another notable example of a flash crash occurred in 2015 in the Chinese stock market. On August 24, 2015, the Shanghai Composite Index fell 8.5% in a single day, which was its largest one-day decline since the global financial crisis of 2008. The sharp decline was attributed to a variety of factors, including concerns about China's economic slowdown and a lack of confidence in the government's ability to manage the situation.

Unrepresentative Pricing[26]: This is an anticompetitive practice in e-commerce where the seller sets the price of the product in a way that does not correspond with the market value. This practice can lead to price discrimination, monopolization, and unfair competition.

Examples of unrepresentative pricing in e-commerce include:

1. **Predatory pricing**: This occurs when a seller sets prices very low to drive competitors out of business. Once the competition is eliminated, the seller raises prices to recoup losses.
2. **Price skimming**: This involves setting a high price for a product when it is first introduced into the market, then lowering the price over time to attract price-sensitive customers.
3. **Price fixing**: This occurs when competitors agree to set prices at a certain level to eliminate competition.
4. **Bid rigging**: This is when sellers collude to determine which seller will win a bid, which can lead to higher prices for buyers.
5. **Price discrimination**: This is when a seller charges different prices for the same product to different buyers, without any valid reason.

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[26] Macdivitt, H., & Wilkinson, M. (2011). Value-Based Pricing: Drive Sales and Boost Your Bottom Line by Creating, Communicating and Capturing Customer Value. Publisher. (Pp 47-49)

6. **Tying**: This is when a seller requires a buyer to purchase a second product to obtain the first product.

Failure/refusal to submit orders in due time[27]: It occurs when traders who fail or refuse to submit their orders on time can create an unfair advantage over other traders by manipulating the market conditions. This can result in distorted market prices, reduced liquidity, and decreased market efficiency.

For instance, if a trader intentionally withholds a large sell order until the end of the trading session, the sudden influx of sell orders could cause a significant drop in the price of the asset being traded. This would negatively impact other traders who have already placed their buy orders at higher prices, resulting in losses.

To prevent such practices, many electronic trading platforms have established pre-open sessions where traders are required to submit their orders in advance. This allows the Electronic commerce to analyze the supply and demand for the asset being traded, and to adjust the market conditions accordingly.

However, if traders fail or refuse to submit their pre-open orders in due time, it can result in incomplete market information, creating an unfair advantage for those who choose to wait until the actual trading session to submit their orders. Therefore, it is important for traders to follow the rules and regulations set forth by the Electronic commerceto ensure a fair and efficient market for all participants.

Pace Making's[28]: Pace making is an anticompetitive act characterized by the submission of orders without any genuine intention of executing trades. Its purpose is to create artificial liquidity, making it appear as though there is more demand for a product or Products than there actually is. Some examples of pace making in e-commerce include:

1. **Spoofing:** This is a technique where a trader places a large buy or sell order with the intention of cancelling it before execution. The goal is to create the illusion of demand or supply, driving the market in a particular direction.

[27] Pirrong, C. (2004). Detecting manipulation in futures markets: the Ferruzzi soybeans episode. American Law and Economics Review, 6(1), 28-71.

[28] Porter, M. E. (1980). Competitive Strategy: Techniques for Analyzing Industries and Competitors (Pp. 59).

2. **Layering:** This is similar to spoofing but involves placing multiple orders at different price levels. The goal is to create a false impression of market depth and liquidity.
3. **Quote stuffing:** This involves sending a large number of orders to an Electronic commercein a short period of time, overwhelming the system and creating delays in order processing. The goal is to slow down or disrupt the market, allowing the trader to gain an advantage.
4. **Market manipulation:** This is a broad category that includes various tactics for influencing prices, such as spreading false rumors, manipulating news releases, or colluding with other traders to drive prices in a certain direction.

Marking the Close[29]: In e-commerce, "marking the close" can refer to a similar practice where a seller artificially inflates the price of a product or service just before the end of a sale period in order to give the impression of a high demand or scarcity, and to induce customers to make a purchase. This can be achieved by various means such as using fake accounts to place orders, using bots to create fake traffic, or colluding with other sellers to artificially drive up prices.

Examples of marking the close in e-commerce could include:

- A seller on an online marketplace artificially inflating the price of their product just before the end of a sale period to give the impression of high demand.
- A travel booking website inflating the price of a hotel room or flight just before the end of a promotion to encourage customers to make a purchase.
- A ticket seller for an event artificially inflating the price of tickets just before the event is about to start to give the impression of high demand.

Cornering and Dumping[30]: Cornering refers to a situation where a company or individual attempts to control a particular market by buying up as much of a particular product as possible, thereby reducing the supply of that product in the market and driving up the price. This can lead to a situation where other companies are unable to compete on price, as the cornering party has effectively established a monopoly in the market.

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[29] Committee of European Securities Regulators (CESR). (2004). Market Abuse Directive Level 3 – Preliminary CESR Guidance and Information on the Common Operation of the Directive. Pp 12.

[30] Viner, Jacob. "The Prevalence of Dumping in International Trade:" Journal of Political Economy, vol. 30, no. 5, 1922, pp. 655-680. Published by The University of Chicago Press.

An example of cornering in e-commerce might be a situation where a single seller purchases all available stock of a particular item from a manufacturer or distributor, and then resells that item at a significantly higher price on their own website or platform.

Dumping, on the other hand, refers to a situation where a company or individual attempts to gain market share by selling products at a lower price than their competitors. This can be done by manufacturing products at a lower cost, or by subsidizing the cost of production in order to sell products at a loss. Dumping can be a particularly effective strategy for large companies with deep pockets, as they can afford to sell products at a loss for an extended period of time in order to drive competitors out of the market.

An example of dumping in e-commerce might be a situation where a large online retailer sells a particular product at a significantly lower price than their competitors, in order to gain market share and drive their competitors out of business. Alternatively, a manufacturer might sell their products directly to consumers at a lower price than their retail partners, in order to gain a larger share of the market.

Cross Trading[31]: Cross trading occurs when a trader represents both the buyer and seller in a transaction, and profits from the difference in price between the two parties.

For example, if a trader represents both a buyer and a seller in a transaction for a certain Products, they can manipulate the price of the Products by controlling the supply and demand for it. This can result in unfair pricing and market manipulation, which can harm other traders and consumers in the market.

Another example of cross trading as an unfair trade practice is when a trader withholds information from one client that could affect the outcome of the transaction, in order to benefit their other client. This can lead to an unfair advantage for one party over the other, which is considered unethical and anticompetitive.

It is evident that Article 8 of Proc. No. 813/2013 does not directly or indirectly address the specific anticompetitive unilateral acts mentioned earlier. This gives rise to concerns regarding the appropriateness and adequacy of the unfair competition rules in the context of electronic

[31] Casavecchia, Lorenzo and Tiwari, Ashish. "Cross Trading by Investment Advisers: Implications for Mutual Fund Performance." September 1, 2014. Pages 2-4.

commerce, particularly when considering the nature of Anticompetitive Unilateral Acts in this domain and their relationship with the existing unfair competition provisions.

1.3. Research Question

The central research question for this study is as follows;

1. Is the Ethiopian competition law the best means to challenge Anticompetitive Unilateral Acts in the Electronic Commerce?

The sub-questions are as follows:

2. What are the prevalent Unilateral Anticompetitive trade practices in Ethiopia's Electronic commerce sector?
3. What are the challenges faced in enforcing the Unilateral anticompetitive trade practices rules of Ethiopia's competition law on e-commerce?
4. How effective are the current mechanisms in place for detecting and addressing Unilateral anticompetitive trade practices in Ethiopia's e-commerce sector?
5. What can be done to improve the enforcement of Unilateral anticompetitive trade practice rules in Ethiopia's e-commerce sector?
6. How can the government and other stakeholders work together to promote fair competition and consumer protection in Ethiopia's e-commerce sector?

1.4. Objective of the Study

The study's objectives are as follows;

- To explore the various types of unilateral anticompetitive trade practices prevalent in Ethiopia's e-commerce sector.
- To assess the level of awareness and compliance of e-commerce businesses with Ethiopia's competition law.
- To analyze the challenges faced in enforcing the unilateral anticompetitive trade practice rules in the e-commerce sector in Ethiopia.
- To recommend measures to enhance the enforcement of unilateral anticompetitive trade practice rules in Ethiopia's e-commerce sector.
- To contribute to the existing literature on competition law and e-commerce in Ethiopia.

1.5. Significance of the Study

The significance of this study lies in its aim to comprehend and analyze Ethiopia's regulations regarding unfair trade practices, specifically focusing on anticompetitive unilateral acts in Electronic Commerce. It seeks to investigate how electronic trading effectively addresses these acts and identify potential areas within the country's framework of unfair trade practices that could be further strengthened to tackle such anticompetitive behaviors. The insights gained from this study will provide a valuable resource for future research in the field of Electronic Commerce, contributing to a deeper understanding of competition dynamics in this rapidly evolving domain.

1.6. Research Methodology and Methods

1.6.1. Research Methodology

In order to fulfill the objectives of this study and answer the research questions, the primary methodological approach used in this thesis was doctrinal research. This involved an examination of the pertinent Ethiopian competition laws, particularly in relation to the competition issues that emerge in the context of e-commerce.

To gather background information for this research, a comprehensive literature review was conducted focusing on competition and e-commerce issues. A wide range of public materials were meticulously reviewed, which included academic literature, reports, and notes from various governmental, regional, and international organizations like the EU, UNCTAD, and the OECD.

To gather first-hand insights about the background of competition law and its implications on e-commerce, this study incorporated a modest empirical investigation. This thesis utilized interviews and semi-structured questionnaires, focusing on e-commerce, which were administered to key informants in e-commerce companies who have direct experience and understanding of the implications of competition legislations on their operations.

1.6.2. Research Methods

The doctrinal part of this study involved gathering primary data from domestic Constitutional Rules, Proclamations, Regulations, and Directives related to trade competition and consumer protection. Furthermore, secondary data from various sources, including books, journals, articles, legal encyclopedias, dictionaries, and commentaries, were collected. The data collection process included accessing libraries and online sources to ensure a comprehensive coverage of information.

The empirical part of the study involved the utilization of primary data, specifically through semi-structured interviews, semi-structured questionnaires, and archive reviews. Conducting semi-structured interviews proved valuable in gathering comprehensive information from the staff members of the Electronic Commerce's Sales and Marketing Division team, as well as the higher management and legal team responsible for monitoring and enforcing trading rules. The less structured questionnaires were instrumental in obtaining insights into contemporary Anticompetitive Unilateral Acts within the Electronic Commerce's Electronic commerce from the traders actively participating in the Electronic Trading platform.

In order to ensure clarity and obtain precise responses, the research questionnaire and interview questions were formulated in Amharic language and interpreted by the researcher. With permission from the target group companies, a limited archive review was conducted on recorded data that captured instances of Anticompetitive Unilateral Acts or incidents addressed by the companies' rules regarding Electronic commerce transactions. To simplify matters and safeguard the confidentiality of case-related information, whether pending or resolved, the study employed identification codes instead of real file numbers and incident numbers.

The study utilized purposive sampling to collect data through questionnaires, as not all members of the Electronic Commerce (which includes 42 of the best e-commerce companies in Ethiopia for 2023) are consistently active in trading. Therefore, the sampling approach selected for the study focused on those traders who were actively engaged in the Electronic commerce and participated regularly, with the aim of obtaining a representative sample for the analysis.

The study selected six online traders from the total population based on their trade value from July 20, 2015 to January 01, 2023. Data was collected and analyzed by comparing the gathered information with the contemporary challenges of enforcing unfair trade practice rules, specifically Anticompetitive Unilateral Acts, in the Electronic Commerce sector. The empirical data, presented in charts, was analyzed to determine the enforcement of unfair trade practice rules and Anticompetitive Unilateral Acts in the Electronic commerce. Additionally, the analysis of empirical data shed light on the rules employed by the Electronic Commerce to address Anticompetitive Unilateral Acts and the related practical challenges.

Finally, this this study employed an impartial and focused literature review methodology to explore Anticompetitive Unilateral Acts. The objective was to provide readers with a comprehensive overview of the current knowledge and understanding related to the research topic.

1.7. Literature Review

The research team's Review of Legal and Institutional Framework for Market Competition in Ethiopia defines "Unfair Competition" as business practices employed by companies that cause economic harm to rival firms, often through dishonest or unfair means.[32]

Based on the research team's report, various examples of unfair competition were identified. These practices involve trademark infringements, deceptive advertising, misleading selling tactics such as bait-and-switch, unauthorized use of other brands, exploitation of confidential information by former employees, theft of trade secrets, violations of restrictive covenants, trade defamation, and fraudulent misrepresentation of products or services.[33]

According to Alemayehu Fentaw in his scholarly work, the legal framework of unfair competition primarily comprises tort rules. These rules are designed to address situations where harmful actions, often involving deceptive or wrongful business practices, adversely affect the economic interests of businesses.[34] In a nutshell, the law of unfair competition can be described as a form of extra-contractual liability based on fault.[35] Alemayehu Fentaw points out the complexity in differentiating unfair commercial competition from other legal domains, including Extra-contractual Liability Law, Contract Law, Intellectual Property Law, or Antitrust Law.

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[32] Merso, Fikremarkos; Tamirat Yigezu, Imeru; Yohannes, Seyoum; Endeshaw, Yoseph; Teshome Retta, Tilahun. "Review of the Legal and Institutional Framework for Market Competition in Ethiopia," 2009. (Available at: http://publication.eiar.gov.et:8080/xmlui/bitstream/handle/123456789/2702/38.abbyy.pdf?sequence=1&isAllowedy)

[33] Ibid

[34] Alemayehu Fentaw, "Ethiopian Unfair Competition Law," The University of Oxford Centre for Competition Law and Policy: Working Paper CCLP (L) 21, p. 2., (Available at: https://www.law.ox.ac.uk/sites/default/files/migrated/cclp_l_.21.pdf)

[35] Ibid

Especially when unfair acts encompass activities such as price fixing agreements, breach of contractual obligations, marketing unsafe products, copyright/patent/trademark infringements, or dissemination of misleading advertisements, this complexity becomes more evident.[36]

According to Harka Haroye, a former Chairman of Ethiopian Trade Practice Investigation Commission, the term 'unfair competition' pertains to dishonest or fraudulent rivalry within trade and commerce, as stated in his article "Competition Policy and Laws: Major Concepts and an Overview of Ethiopian Trade Practice Law." This type of competition involves the violation of intellectual property rights owned by individuals or firms.[37] According to legal experts, acts such as counterfeiting of products, passing off goods as those of a competitor, exploiting another's goodwill or reputation, deceptive packaging, and creating confusion among consumers through imitation of packaging or labeling are all considered forms of unfair competitions.[38]

As opposed to previous descriptions of unfair competition, Phillip Areeda and Donald Turner provide a distinct definition for Predatory Pricing. According to them, it is a calculated strategy employed by a firm to deliberately set remarkably low prices, resulting in short-term losses, with the aim of forcing competitors out of the market and later establishing a monopoly to reap substantial profits.[39] Another example of Anticompetitive Unilateral Act is 'Cheap Exclusion,' where a firm engages in actions that pose little risk or loss in the short term but promise greater gains compared to any initial losses in the long run.[40]

"Below is an inspiring excerpt directly cited from the literature of Harka Haroye."

"It was as far back as 1889 and 1890 that Canada and USA laid, respectively, Their strong foundation for a proper competition regime. If Ethiopia cannot do so after over a century, we need to take the blame. Until Ethiopia's competition regime is comprehensively addressed, the

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[36] Ibid

[37] Harka Haroye, Competition Policies and Laws: Major Concepts and an Overview of Ethiopian Trade Practice Law." Mizan Law Review, vol. 2, No. 1 (2008), pp. 44-51 (hereinafter cited as 'Harka Haroye').

[38] Ibid

[39] KATHARINE. KEMP, 'TAKING ADVANTAGE' OF SUBSTANTIAL MARKET POWER, AND OTHER PROFIT-FOCUSED TESTS FOR UNILATERAL ANTICOMPETITIVE CONDUCT'. Monash University Law Review, vol. 4 1. No. 3. p. 661 (Available at: https://www.monash.edu/__data/assets/pdf_file/0018/446211/Vol413-Kemp.pdf) (hereinafter cited as 'K. Kemp')

[40] Id. K. Kemp, p. 684

business community, consumer of good and services and the transitional economy at large are bound to steadily encounter the pitfalls of inadequate competition laws and regulatory mechanisms.[41]

Given the lack of literature directly addressing competition issues in Ethiopia's Electronic Commerce, this study aims to shed light on the challenges faced and propose solutions regarding Anticompetitive Unilateral Acts. Additionally, the study aims to assess the effectiveness of measures proposed by the researcher and the competition law in addressing the issue at hand.

1.8. The Scope and Limitation of the Study

The study focuses solely on the legal framework of Ethiopia's competition regime regarding Anticompetitive unilateral Acts in relation to the Electronic commerce in Ethiopia. Besides, the researcher tries to explore and present the practice in Ethiopia in relation to ecommerce as stated in the above paragraph of this section. Consequent to the finding of facts, conclusions will be drawn, and recommendations will be made.

Obtaining comprehensive reports or archives specifically focused on anticompetitive unilateral acts in the realm of electronic commerce has proven challenging. Consequently, this study draws upon data provided by companies engaged in electronic commerce, as well as information derived from the World Wide Web (Internet), interviews, and general e-commerce literature. While the absence of dedicated reports on anticompetitive unilateral acts poses limitations, these alternative sources serve as valuable resources for conducting the research and shedding light on the topic.

1.9. Organization of the Study

The study is structured into four chapters. Chapter one introduces the study proposal. Chapter two delves into the regulations surrounding Anticompetitive Unilateral Acts within the Ethiopian Competition regime and identifies these acts within the electronic trading industry. Chapter three examines the enforcement of Ethiopian laws pertaining to Anticompetitive Unilateral Acts in the Electronic commerce and addresses the challenges associated with it. Finally, chapter four concludes the study and presents recommendations based on the findings. The main research question is addressed in chapters two to four.

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[41] Harka Haroye, Competition Policies and Laws: Major Concepts and an Overview of Ethiopian Trade Practice Law." Mizan Law Review, vol. 2, No. 1 (2008), pp 51

Chapter Two

2. An Overview of E-commerce and Competition Regulation in Ethiopia: Insights into Unilateral Anti-competitive Practices in Electronic Commerce and Regulations thereto Under Ethiopian Competition Law

2.1. Regulation of E-commerce and Competition in Ethiopia

Effective market competition and policy formulation are achievable only within the framework of a free market economy.[42] Free market economies facilitate independent decision-making by market competitors when engaging in buying and selling activities. In contrast, competition law plays a diminished role when key economic activities are subject to state regulatory measures.[43] Until 1991, Ethiopia operated under a closed market regime. The shift towards a free-market economy occurred when the transitional government opened the market to private enterprises. Since then, various policies and strategies have been implemented to cultivate a free market economy. The Federal Democratic Republic of Ethiopia's constitution guarantees that every individual has an equal right to benefit from the nation's intellectual and material resources. It also ensures equal opportunities for individuals to enhance their economic conditions and promotes the equitable distribution of wealth.[44]

Aligning with this approach, various policies have been established to uphold the free market economy and foster market competition. The inaugural Industrial Development Strategy confirmed Ethiopia's commitment to a free market economy, emphasizing that private sectors serve as the primary catalysts for the country's industrial development.[45] It also asserts that government intervention is necessary to regulate economic activities.[46] However, the Strategy does not specify the manner (whether through regulation or administration) or the extent to which the government

[42] Merso et al (n33) 7.

[43] Proclamation No. 1/1995, Constitution of the Federal Democratic Republic of Ethiopia. Art. 89 (1-2). Federal Negarit Gazeta

[44] Proclamation No. 1/1995, Constitution of the Federal Democratic Republic of Ethiopia. Art. 89 (1-2). Federal Negarit Gazeta

[45] Federal Democratic Republic of Ethiopia, Industrial Development Strategy (Amharic Version, August 2002), p.5

[46] Ibid

should intervene.[47] The updated Industrial Development Strategy addresses this by outlining the implementation strategies to be pursued.[48] It also acknowledges the significance of a free-market economy and the critical role of private sector participation.[49]

While these strategy documents do not directly address the policies and legal structures of market competition, they set the groundwork for its improvement. This is achieved by promoting private sector engagement and fostering a favorable environment for industrial growth and market development.

The Information and Communication Technology (ICT) Policy was initially introduced in 2002, and subsequently underwent revision in 2009.[50] It is primarily designed to lay the foundation for the development of ICT infrastructure, human resources, legal systems, and security measures.[51] The Policy also prioritizes the advancement of e-government services, including those within the education, health, and agricultural sectors. Additionally, it acknowledges the significant role of the private sector in providing ICT services.[52]

The Draft ICT Policy and Strategy introduces e-commerce as a key principle, an element that was not encompassed in the previous ICT Policy.[53] In addition to the aforementioned goals of the ICT Policy, the Draft Policy underscores the development of e-commerce. This includes the establishment of regulatory frameworks for e-commerce transactions, the facilitation of E-Payment systems, and the promotion of awareness around e-commerce.[54] In the context of e-commerce market competition, the recognition of the private sector's pivotal role, along with the expansion of ICT facilities and infrastructure under the ICT Policy, contribute to the expansion of e-commerce and its market competition regulation.

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[47] Ibid

[48] Ibid

[49] Ibid

[50] The National Information and Communications Technology Policy and Strategy of the Federal Democratic Republic of Ethiopia (August 2009).

[51] Ibid

[52] Ibid

[53] Ibid

[54] Ibid

A Digital Transformation Strategy is also under development with the goal of enhancing the digital ecosystem and leveraging technology.[55] The Strategy primarily aims at extracting value from agriculture, amplifying the global value chain by encouraging manufacturing, establishing IT-enabled services, and employing digital capabilities as a catalyst for competitive tourism.[56]

It further underscores technology-centric strategies and digital transformation via ICT infrastructure development, which encompasses the expansion of e-commerce.[57]

The Strategy emphasizes the need for collaboration between public and private sectors in establishing a comprehensive logistics sector, a delivery or national addressing system, and in creating market opportunities for investors to participate in e-commerce.[58] Although the Strategy doesn't directly address market competition, it lays the groundwork for future comprehensive digital policy development and legal reform. It's likely to foster a competitive environment in e-commerce marketplaces as well.

Upon taking office, the current Prime Minister introduced the Home Grown Economic Reform Agenda.[59] The main goal of the Agenda is to diminish the state's involvement in economic activities.[60] The Agenda aims to rectify macroeconomic imbalances, overhaul structural frameworks and policies, and foster new growth opportunities.[61] The agenda underscores the importance of reforms at the sectoral level and within markets, with respect to competition.[62]

The agenda specifically commits to enhancing the efficiency of domestic markets for goods and services. This includes removing entry barriers, enforcing competition laws, and improving the efficiency of the supply chain within the commodity market.[63]

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[55] Digital Ethiopia 2025: A Digital Strategy for Ethiopian Inclusive Prosperity (June 2020).

[56] Ibid, 40-48.

[57] Ibid, 69 – 70.

[58] Ibid

[59] A Homegrown Economic Reform Agenda: A Pathway to Prosperity of Ethiopia (Office of the Prime Minister, September 2019).

[60] Ibid, 3 – 7.

[61] Ibid

[62] Ibid, 19 – 30.

[63] Ibid

Furthermore, Ethiopia has adopted a Ten-Year Development Plan.[64] The adopted Digital Strategy suggests that the forthcoming Ten-Year Development Plan replaced the Growth and Transformation Plan II (GTP II). This plan outlined the medium-term national development goals to be achieved by 2025.[65] The key objectives of the Development Plan include strengthening and enhancing the agricultural sector, along with promoting industrialization.[66] The Development Plan also places a strong emphasis on incorporating the digital economy and facilitating technological transfer. It specifically prioritizes six key sectors, including IT-based services and manufacturing. A central goal of the Development Plan is to foster privatization.[67] The Development Plan's dedication to encouraging privatization across different sectors bodes well for enhancing market competition, both in physical and digital marketplaces.

By and large, the aforementioned policies and strategies set the groundwork for an efficient and fair market competition, particularly in the realm of e-commerce. They underscore the role of private sector participation as a key driver of development. It's been recognized that market competition flourishes best when the market is unhampered by restrictive regulations. In this light, these policies and strategies foster a free market environment and the involvement of private enterprises. Concerning the e-commerce marketplace, they prioritize the development of ICT infrastructure and logistics to establish a conducive market system for e-commerce. While these policies and strategies might not emphasize the importance of market competition regulation in broader terms, they can nonetheless be regarded as a decisive step towards facilitating it in the future.

Besides the aforementioned policy documents, various legislations addressing competition issues also exist. While these codes were enacted to serve distinct legal objectives, they can nonetheless be utilized to regulate certain anti-competitive behaviors that occur in both offline and online marketplaces. For instance, the Civil Code of Ethiopia prohibits false publications or any other methods likely to damage the reputation of a product or the goodwill of a business establishment.[68]

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[64] Ethiopia Unveils 10-Year Development Plan', Fana Broadcasting Corporate (11 Jun, 2020)

[65] SDigital Strategy (n165) 14.

[66] Ibid

[67] Ibid

[68] Civil Code of the Empire of Ethiopia Proclamation, Negarit Gazeta, Proclamation No.165/1960, Art.2057.

Likewise, the Commercial Code of Ethiopia bans unfair competition, offering remedies for violations.[69]

The Federal Democratic Republic of Ethiopia's Criminal Code also penalizes acts of unfair competition, such as misleading actions or false assertions about businesses or products and offering unjustified benefits.[70]

The above-mentioned codes primarily focus on managing competitive relationships between individuals rather than addressing broader market competition and its effects on efficiency. Although these provisions can be applied in cases involving anticompetitive behaviors like fraudulent actions or false declarations, they don't sufficiently cover emerging concepts and issues related to competition, especially in the context of e-commerce marketplaces.

The Communications Service Proclamation, a more recent legislative enactment, introduces distinct regulations for competition.[71] The proclamation strives to oversee competition within the Ethiopian telecom industry. It generally bans any anti-competitive agreements or behaviors that could potentially harm competition in the telecommunications market[72] The Communications Service Proclamation is solely concentrated on competition amongst Telecom service providers.[73] The Communications Service Proclamation stipulates that the Communications Authority holds autonomous power to oversee and regulate the compliance of business entities in the telecom market with competition laws and directives.[74] This suggests that the Authority makes use of the relevant competition laws as a reference to address the case at hand.

Regarding internet service and content provision, the matter of network or platform neutrality may come up. There are various interpretations and concepts of net neutrality. From a competition perspective, net neutrality issues can surface when Internet Service Providers (ISPs) or platform proprietors differentiate between users and content providers, or among sellers using their

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[69] Commercial Code of the Empire of Ethiopia Proclamation, Negarit Gazeta, Proclamation No.166/1960, Arts133, 134 (1-2).

[70] Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation, Federal Negarit Gazeta, Proclamation No. 414/2004, Art. 719.

[71] See Communications Service Proclamation, Federal Negarit Gazeta, Proclamation No.1148/2019, Arts 47-48.

[72] Ibid, Art.48.

[73] Ibid

[74] Ibid, Art. 47.

platform to sell products.[75] A platform operator may also capitalize on the innovations introduced by its seller(s).[76]

The issue of non-price and price discrimination along with other forms of anti-competitive restraints might arise from this situation. However, it seems that the competition provisions of the Communications Service Proclamation are specifically confined to address anti-competitive behavior between Telecommunication Operators in relation to the infrastructure and services they deliver. Thus, these provisions do not extend to the dynamics between e-commerce platforms and content providers or sellers operating on these platforms.

The E-transaction Proclamation addresses the issue of network neutrality, ensuring that digital contracts are treated equitably, provided that they meet the standard legal prerequisites.[77]

The emergence of e-commerce introduces new issues related to net neutrality, such as building trust remotely without the physical presence or inspection of goods.[78] Therefore, the e-Transaction Proclamation only concerns itself with ensuring the neutrality of traditional legal contract requirements towards agreements established electronically, as well as safeguarding consumer protection within these digitally concluded contracts.[79]

Consequently, platform neutrality issues, in the context of competition, are completely deferred to the nation's competition law.

Interestingly, the Council of Ministers' Draft Electronic Transaction Regulation brings to light anti-competitive practices in e-commerce such as tie-in sales and abuse of dominance. According to the Draft Regulation, in instances where e-commerce operators or sellers engage in tie-in sales, they are mandated to clearly inform the customer of such practices.[80] Tie-in sales take place when a seller compels a consumer to purchase a certain item only if they also agree to buy a different product.[81] The draft regulation states that tie-in sales should not be the default

[75] See UNCTAD ‘Competition Issues in the Digital Economy’ (n23) 7.

[76] Shelanski (n97) 1699.

[77] Electronic Transaction Proclamation, Federal Negarit Gazeta, Proclamation No.1205/2020, Arts. 7 –17.

[78] Ibid

[79] Electronic Transaction Proclamation (No. 194) Art. 28 – Art.34.

[80] Draft Electronic Transaction Council of Ministers Regulation (2020), Art. 13 (1).

[81] Ibid, Art. 2(9).

setting.[82]The Draft Regulation doesn't outrightly ban tie-in sales as anticompetitive conduct. Instead, it sets out requirements for sellers when they are dealing with tied goods or services, primarily that they must promptly inform customers about the tie-in.

The Draft Electronic Transaction Regulation forbids the abuse of dominance, specifying that e-commerce platforms or platform owners should not exploit their dominant position through technical advantages, large user base, control over relevant industries, or the dependency of other operators on their platform for trading.[83]

The Draft Regulation somewhat addresses the new elements that can lead to anti-competitive behaviors in e-commerce. However, it does not consider factors like the introduction of disruptive innovations, control over data (Big Data), and network effects, which can have an equally significant or even more substantial impact than the factors mentioned in the Draft Regulation. Although the Draft Regulation does cover personal data protection.[84] However, it only addresses this from the perspective of the right to privacy as stipulated under relevant privacy laws and provisions.[85] Thus, anticompetitive consequences stemming from the control of collective personal data or other relevant data may not be covered by data protection laws that handle issues at an individual level.

In the following section, we will examine relevant competition instruments. The Trade Competition and Consumer Protection Proclamation No. 813/2013 is legislation addressing market competition and regulation in electronic commerce including Unilateral Anticompetitive acts.

Additionally, the Ministry of Trade and Industry issued the Merger Directive No. 1/2016, which outlines the procedures and implementation of mergers. Furthermore, several proclamations, regulations, and directives are currently being drafted.[86] Subsequently, the next section of this analysis offers a comprehensive review of these present and anticipated legal frameworks in light of the primary and potential competition issues in e-commerce, specifically focusing on unilateral anti-competitive behaviors, as discussed in chapter two. With the central objective of this study

[82] Ibid, Art. 13 (2).

[83] Ibid, Art. 16.

[84] See Ibid, Art. 17.

[85]See Ibid, Art. 17(1).

[86] Draft Bills (n20).

being to probe into the competition intricacies within e-commerce and unilateral anti-competitive actions in relation to the nation's competition regulation, the scrutiny is strictly limited to the competition clauses relevant to the e-commerce environment.

2.2. The Anticompetitive Unilateral Acts and the Enforceability of the Laws

The Trade Competition and Consumer Protection Proclamation No. 813/2013 is a comprehensive legal framework that regulates market competition across all sectors, supplemented by additional proclamations, regulations, and directives currently under development.[87]

This section scrutinizes these legal instruments along with draft provisions, taking into account the major competition concerns in the electronic commerce marketplaces outlined in the previous section of this study. Proclamation No. 813/2013 is the prevailing competition law in Ethiopia, which was enacted fairly recently in 2013. On closer inspection, it appears that the existing legal instruments and policy instruments were not specifically designed to address competition concerns in e-commerce marketplaces. While several draft pieces of legislation are currently under development, these bills are being amended and revised to incorporate features specific to e-commerce competition. Although certain elements seem to unintentionally touch upon the issue of e-commerce market competition, as discussed further below, there is no specific provision that explicitly encourages the adoption of unilateral anticompetitive practices in the e-commerce market. This assertion is supported by the background document of the draft competition law, intended to replace Proclamation No. 813/2013.[88]

It provides justifications for the amendment of certain provisions of the Trade Competition Proclamation such as the scope of application.[89] However, the research document does not tell whether unilateral anti-competitive act is within the scope of the Draft Trade Competition Proclamation.

Related to scope, provisions of competition law and other relevant laws still address competition issues irrespective of the channel of market. If there is a proof that a given e-commerce platform

[87] Draft Bills (No. 6).

[88] Background Document to Provide Justification for the Amendment of Proclamation No. 813/2013 (Amharic Version, December 2019) [On file with author].

[89] Ibid,

abuses a market position it has, relevant provisions about abuse of dominance can deal with the issue at hand. Likewise, different clauses addressing anti-competitive behaviors can effectively govern several issues related to anti-competitive practices in e-commerce. However, there are gaps in addressing non-price and implicit forms of anti-competitive behaviors commonly observed in e-commerce. These gaps, as we will explore further, seem to fall outside the scope of Ethiopia's current competition law. With this in mind, there are key anti-competitive issues covered by the trade competition law. Thus, the following section discusses the extent to which existing laws address the unilateral anticompetitive issues in the context of e-commerce.

2.2.1. Flash Crashing

Flash crashing refers to sudden price fluctuations in buying or selling commodities, typically occurring in the last moments of a trading session. This phenomenon occurs because prices are often determined near the session's end, leading to a surge or drop in prices during the final seconds or minutes of trading. Most electronic trading transactions occur during this critical time period.[90] This refers to a tactic known as "Last-Minute Snatching," commonly employed by both buyers and sellers in an anticompetitive manner. Buyers engage in this practice by swooping in during the final moments of trading to snatch commodities from other buyers who have spent the entire session negotiating and competing for the same goods. On the other hand, sellers utilize this tactic by abruptly lowering their selling price and offering a higher volume of the same Products in order to secure sales over other sellers.[91] For instance, Let's say there are two online retailers selling a popular brand of headphones. Retailer A has been selling the headphones for $50, while Retailer B has been selling them for $60. As a result, most consumers have been purchasing the headphones from Retailer A due to the lower price.

However, right before a major holiday shopping period, Retailer B employs a tactic known as flash crashing. They abruptly reduce their price to $40, enticing numerous consumers to switch their purchases from Retailer A to Retailer B. As a result of this anticompetitive act, Retailer A, who had been offering a lower price consistently, experiences a significant loss in market share and

[90] Kirilenko, A., Samadi, M., Kyle, A. S., & Tuzun, T. (2011). The Flash Crash: The Impact of High Frequency Trading on an Electronic Market (pp. 9-12). In Proceedings of the 22nd Annual Conference on Financial Economics and Accounting.

[91] Interview with Amanuel Chala, PurposeBlack Electronic commerce and IT Division Director. (2023, May 16).

revenue. In this scenario, Retailer B outmaneuvers the two competing buyers by executing a massive trade and taking advantage of the two buyers who had discovered a market price by assuming various market risks, such as overpricing.

Furthermore, flash Crashing not only disrupts the usual process of price discovery based on demand and supply principles but also undermines trader confidence in the Electronic commerce. Traders may become hesitant as they witness sudden and arbitrary increases or decreases in selling or buying prices, leading to a lack of predictability in price movements during trading sessions and the execution of trades by potential buyers or sellers.[92]

Additionally, flash Crashing presents a significant risk to future trades, as the Electronic commerce regulates price fluctuations based on the closing prices of previous trading sessions. To maintain market stability, there is typically a limit on price movements, allowing for a maximum increase or decrease of 5% in pending trading sessions compared to the previous trade's closing price for a specific product or good. Flash crashing undermines this regulation and can disrupt the market by exceeding the allowable price limits, potentially leading to market volatility and uncertainty.[93]

Therefore, sudden and unjustified increases or decreases in prices can lead to inflation or deflation of future trade prices for goods, without any economic justification. This not only distorts the market but also creates an environment of uncertainty and instability, making it difficult for traders to make informed decisions and plan for future transactions.[94]

Furthermore, the inflation and deflation of prices can have a detrimental effect on the electronic commerce platform's ability to disseminate genuine and accurate price information to its stakeholders, particularly small-scale traders. This can undermine the transparency and reliability of the electronic commerce system, eroding trust among traders and hindering fair competition. The dissemination of misleading or fluctuating prices can create confusion and make it challenging for stakeholders to make informed decisions, ultimately impacting the effectiveness and efficiency of the electronic commerce ecosystem.[95]

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[92] Ibid

[93] Ibid

[94] Ibid

[95] Ibid

As per Amanuel Chala, PurposeBlack is a brand-new initiative launched in May 2020 by a group of more than 130 Black experts. PurposeBlack, as the name suggests, aims to economically address some of the most pressing issues confronting Black people worldwide. The first model of this global initiative is being prepared for launch in Ethiopia. They are convinced that the new approach represents an excellent opportunity for Ethiopia and Africa to be at the center of a massive international enterprise that will benefit millions of Africans. The PurposeBlack Ethiopia initiative can be a multi-billion Birr task so as to consist of the construction and release of a mega agro-processing complex, an e-commerce marketplace, five hypermarkets, ten huge supermarkets, and a network of over a thousand retail and distribution stores throughout Ethiopia. In- doing the business in Ethiopia, flash Crashing leads to the artificial flooding of the market with commodities, resulting in inflated prices. This can deceive market participants into thinking that the demand for the Products is rising, compelling them to purchase it at any cost. Conversely, flash Crashing can also result in deflated prices, leading market actors to believe that the Products has low demand or is of inferior quality.[96]

The questioner gathered from traders of the Electronic Commerce shows that out of one hundred traders, an average of 90% of the traders confirmed that the Electronic commerce faced/still faces flash crashing act in addition to other Anticompetitive Unilateral Acts.

2.2.2. Unrepresentative Pricing

Unrepresentative pricing is an anti-competitive act involving significantly higher or lower prices than the market norm, regardless of the Products's value. It can distort the market, discourage competition, and harm consumers and producers. This practice causes artificial demand or supply, market inefficiency, reduced transparency, and compromised market integrity.[97]

For instance, in the case of a popular electronic gadget such as a smartphone, a seller may suddenly drop their selling price during the last few seconds of the trading session to attract buyers and create an artificial sense of urgency to buy the product. This could cause other sellers who have been offering the same product at a higher price throughout the trading session to lose out on potential sales and profit. The sudden drop in price by the seller could also cause buyers who have

[96] Ibid

[97] Chioveanu, I. (2012). Price and quality competition. Journal of Economics, 107(1), PP 23-44.

already purchased the product at a higher price to feel cheated and dissatisfied with the trading system.

Hence, buyers and sellers in online markets often present prices for products that do not accurately reflect their true value. This can lead to financial losses for the government if the Products is sold at such prices and can also contribute to misleading price data on the Exchange, affecting future trades conducted by traders relying on such prices.

Amanuel Chala, PurposeBlack Electronic commerce and IT Division Director to oversee the strategic direction of the business in the Ethiopia, stated that Unrepresentative Pricing is one of many Anticompetitive Unilateral Acts market surveillance di vision witnessed and forwarded incidents related thereof to the concerned legal division of the Exchange, investigation and enforcement division. Amanuel Chala pointed out that such pricing could easily be observed from contraband coffee trades; since contraband coffee is considered as a property the government, both sellers and buyers of contraband coffee tends to offer a lower price than the coffee could/should have gotten in a competitive market. Amanuel Chala also highlighted that this type of pricing behavior can be observed in trades conducted between two affiliated traders who intend to influence the price of future transactions by deliberately setting a higher or lower price for a particular Products; However, regardless of the price at which affiliated traders trade their products, they can easily offset any losses through transfer pricing. The use of false trading prices by affiliated companies and illicit coffee traders facilitates tax evasion and distorts market prices on online trading platforms, creating a misrepresentation of actual market conditions. [98]

Besides, Amanuel Chala mentioned that Unrepresentative pricing could feed false data to the Electronic commerce- and may also create artificial/false liquidity of commodities which may apparently mislead the price discovery process.[99] Amanuel Chala also stated that such pricing may mislead the Electronic commerce into disseminating false/unrepresentative price to stakeholders such as small-scale traders and international buyers and sellers of goods.[100]

Interview conducted with the Management of the Six Companies revealed that the Electronic commerce faced Unrepresentative Pricing of products and the Exchange's investigation and

[98] Interview with Amanuel Chala, PurposeBlack Electronic commerce and IT Division Director. (2023, May 16).

[99] Ibid

[100] Ibid

enforcement division forwarded charges thereof;[101] the Ad hoc Investigation Committee penalized this act claiming that it is against competitive trading practice.[102]

Based on data collected from six interviewees, it was found that an average of 85.3% of online traders using the Electronic commerce acknowledged the presence of Unrepresentative Pricing. They perceive this practice as an Anticompetitive Unilateral act.

2.2.3. Failure/refusal to submit orders in Due Time

Traders may use market information to make their decisions while buying or selling commodities.[103]

To promote fairness and transparency in Ethiopia's Electronic commerce, traders must disclose pre-trade information during different stages of the trading process. One crucial stage is the pre-open session, where buyers and sellers are obliged to share details about their orders. This requirement prevents the hiding of vital market information and ensures that all participants have access to the necessary information for making informed decisions and engaging in fair competition.[104]

Failure/refusal to submit pre-open session order could avoid disclosure of market information (demand and supply in the market, quantity, quality, price etc.) and it may lead traders to execute trades without having the necessary trade information.[105]

Amanuel Chala states that not submitting a pre-open session order provides an unfair advantage to the person who refuses to do so. Other traders or competitors are unaware of the demand or supply of this person, leading them to make market decisions without necessary information about the trader hiding their trade details (such as quantity, quality, or price). This lack of information can create an imbalance and hinder fair competition.[106]

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[101] Ibid

[102] Ibid

[103] Wisner, J. D., Tan, K. C., & Leong, G. K. (2016). Principles of Supply Chain Management: A Balanced Approach (4th ed.). Cengage Learning pp 78-82

[104] Chopra, S., & Meindl, P. (2015). Supply Chain Management: Strategy, Planning, and Operation (6th ed.). Pearson. Pp 22-24

[105] Glosten, L.R., & Milgrom, P.R. (1985). Bid, Ask and Transaction Prices in a Specialist Market with Heterogeneously Informed Traders. Journal of Financial Economics, 14(1), 71-100.

[106] Interview with Amanuel Chala, PurposeBlack Electronic commerce and IT Division Director. (2023, May 16).

Amanuel Chala also stated that such hiding of market information challenges market surveillance divisions' work since the division couldn't gather the necessary trade information to analyze competitiveness of trading activities and performance of traders as compared to their initial (preopen session) demand or supply.[107]

On his statement, Amanuel Chala confirmed that refusal/failure to submit pre-open session order is a systematic tool which leads into unrepresentative pricing.[108]

He further noted that such practices are particularly prevalent during holidays like Easter. However, to mitigate this issue, we have implemented a contract system with vendors where they must inform us of their stock availability at least one week in advance before submitting their products on the platform. If they fail to comply, we issue warnings, and if the issue persists, we remove them from the system. Our primary principle is to conduct business in favor of the consumer.

For instance, in an online marketplace, a seller may strategically decide not to list their product during peak hours or set an excessively high price. This can deceive buyers into believing there is less competition, leading them to pay the inflated price or purchase from a different seller. After the peak hours or when other sellers' products are sold out, the seller who hid their product or set a higher price may then list it at a more reasonable price to attract more buyers. This unfair practice undermines marketplace competitiveness.

Sophia Negashi, Cheif Support Operation Officer and Amanuel Chala, PurposeBlack Electronic commerce and IT Division Director confirmed that the Electronic commerce has encountered Anticompetitive Unilateral acts in the past. The Electronic commerce has taken disciplinary actions against such acts following investigations by the enforcement division.[109]

Acknowledging the presence of this anticompetitive act within the Exchange, Amanuel Chala emphasized that our marketplace has taken measures to address this issue. Specifically, we have implemented a mandatory requirement for traders to submit pre-open session orders one week prior to the sales date in order to participate in the actual trading session (Open Session). This

[107] Ibid

[108] Ibid

[109] Interview with Sophia Negashi, Cheif Support Operation Officer and Amanuel Chala, PurposeBlack Electronic commerce and IT Division Director. (2023, May 16).

proactive step helps prevent unfair practices and promotes a more transparent and competitive trading environment.[110]

The researcher encountered difficulties in reviewing an exemplary charge brought forth by PurposeBlack Ethiopia and other online traders. This is primarily due to their lack of belief in the existence of a legal framework that can provide a remedy, as well as the insufficiency of evidence to pursue these cases in a court of law. However, there is a notable charge in the Products Electronic commerce market that specifically addresses the failure or refusal of traders to submit pre-open session orders on the Electronic Trading platform. This charge focuses on instances where traders neglect their obligation to participate in the pre-open session, which is a crucial step in the trading process.[111]

Among one hundred traders who participate on the Electronic Trading, an average of 52.6% traders confirmed that failure/refusal to submit pre-open session orders is one of the Anticompetitive Unilateral acts in the Electronic commerce faced or still faces.

2.2.4. Pace Making

Pace making is a manipulative strategy where traders create a false sense of demand or supply for a Products. They submit multiple orders at a specific price to make it appear that there is high demand or ample supply. Once other traders follow this pattern and submit orders at similar prices, the original pace maker cancels their orders, benefiting from the market shift and executing trades at more favorable prices.[112]

Simply put, this an act of false attempt to trade; which misleads competitors into making a decision under the impression that the order being submitted by the pace maker is a genuine attempt to buy/sell a Products, while in fact the pace maker's order in a false order submitted simply to mislead others and create artificial liquidity of a Products in the market, hence the pace maker rejected his order and leave the market for his competitors to buy/sell a Products with a pace set by the pace maker.

[110] Interview with Amanuel Chala, PurposeBlack Electronic commerce and IT Division Director. (2023, May 16).

[111] Ethiopia Products Exchange, Compliance Division Charge No. 003. June 2017, unpublished.

[112] Goldstein, M. A., Kumar, P., & Graves, F. C. (2014). Computerized and high-frequency trading. The Financial Review, 49(2), PP 177-202.

Amanuel Chala stated that pace making is considered an act of artificially influencing the price and liquidity of a Products. In response to this concern, an adhoc task force has been established within the company, led by the Customer Support and Relationship Management department, to closely monitor and investigate such incidents.[113]

For instance, a trader may employ a tactic known as pace making to manipulate the price of a Products in their favor. They achieve this by strategically submitting multiple buy orders at a slightly lower price than the current market price. This action creates a false perception of increased demand for the Products. Subsequently, other traders observe this activity and start following suit by submitting buy orders at similar prices, believing there is a significant demand for the Products. Once the initial trader has successfully generated enough buying momentum, they cancel their orders, causing the demand for the Products to plummet. Consequently, the market shifts in favor of the initial trader, who can then execute their buy order at a more advantageous price.

According to Amanuel Chala, while there haven't been any reported cases presented to the Adhoc Taskforce led by the Customer Support and Relation Department, it is acknowledged that the department actively monitors, and records incidents related to pace making and pace makers in the market. They have established measures to prohibit such activities and conduct thorough investigations when necessary.[114]

Based on the interviews conducted, it was found that an average of 87.5% of the six participants acknowledged the existence of traders who engage in submitting false and misleading orders with the sole intention of creating artificial liquidity and manipulating Products prices.

2.2.5. Marking the Closing Price

It refers to manipulating the price of a product at the end of a trading day to establish a reference point for future trades. Traders intentionally engage in this act to benefit themselves, which can have adverse effects on other traders who depend on accurate closing prices for their

[113] Ibid

[114] Interview with Amanuel Chala, PurposeBlack Electronic commerce and IT Division Director. (2023, May 16).

trades.[115] Since the vendors management system manages fluctuation of prices by providing a price range which allows a maximum and minimum of 5% price deviation from previous date closing price of the last trading session,[116] manipulating closing prices of pending trades could easily help to manipulate future trades.

This practice can be viewed as a deliberate manipulation of Products prices, which is recognized as an Anticompetitive Unilateral Act by the involved companies. Such acts not only harm the integrity of the Electronic commerce but also disrupt the equitable determination of prices and undermine the trustworthiness of market information provided by the Electronic commerce to various stakeholders. These actions contradict the principles of transparency, market efficiency, and fair competition, creating an unfavorable environment for the smooth operation of the Electronic commerce as a whole.[117]

According to Sophia Negashi, the investigation and enforcement division has not yet initiated investigations or prepared charges for incidents related to marking the closing price. However, Sophia Negashi highlighted the importance of reviewing the records of the Adhoc Investigation Taskforce, as this division maintains comprehensive records of every incident, including those related to marking closing prices. By referring to these records, a clearer understanding of such incidents can be obtained, facilitating appropriate actions and ensuring accountability.[118]

Amanuel Chala mentioned that the Adhoc Investigation Taskforce has not yet handled cases specifically related to the act of marking a higher or lower closing price to gain an unfair advantage in future trades. However, he proposed that reviewing the taskforce's records could provide valuable insights into whether traders have been involved in such practices. The taskforce, led by the Customer Support and Relations Management division, is responsible for monitoring and documenting incidents related to anticompetitive behavior, and their records may reveal whether the marking of closing prices has taken place within the trading system.[119]

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[115] Comerton-Forde, C., & Putniņš, T. J. (2015). Dark trading and price discovery. Journal of Financial Economics, 118(1), PP 70-92.

[116] PurposeBlack Ethiopia Adhoc Investigation Taskforce Report. 2022, p. 2 and 7.

[117] Interview with Sophia Negashi, Chief Support Operation Officer (2023, May 16).

[118] Id. see Footnote 72

[119] Interview with Frehiwot G/hiwot, Chief Supply Chain Officer at PurposeBlack Ethiopia (2023, May 16).

Unfortunately, the study revealed no charges, decisions, or incidents specifically tied to the act of marking closing prices that have a significant impact on the direction of future trades, especially in terms of price. The absence of such evidence indicates a lack of documented cases or instances where the practice of marking closing prices has been identified and addressed. It also suggests a perception that there is no legal recourse available in such situations. These findings underscore the importance of ongoing monitoring and investigation to promote transparency and fair practices within the trading system.

However, based on the questionnaire responses, an average of 71.6% of the one hundred traders acknowledged their involvement in the practice of manipulating future prices through the marking of higher or lower closing prices for the goods they intend to trade on future dates. This reveals a considerable prevalence of traders employing this strategy to influence prices in a manner that benefits them.

2.2.6. Cornering and Dumping

Cornering is a market manipulation tactic where traders buy and hoard large quantities of a Products to create scarcity. This artificial shortage allows them to increase the price and generate profits.[120] The traders may use various tactics such as hoarding the Products in warehouses or controlling the supply chain to limit the availability of the Products in the market.[121]

Both Frehiwot G/hiwot and Amanuel Chala confirmed that, cornering refers to the practice of purchasing a large quantity of commodities from the market with the intention of selling them when the market demand increases, or the price of the Products inflates. They further mentioned that there have been cases related to cornering that have been forwarded to the Adhoc Investigation Taskforce for investigation and potential enforcement actions.[122] However, there is an anticompetitive act that closely resembles cornering, which involves pre-arranging trades to execute them in a discriminatory manner, thus discriminating against both competitive buyers and

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[120] Kyle, A. S., & Viswanathan, S. (2008). How to define illegal price manipulation. American Economic Review, 98(2), PP 274-279.

[121] PurposeBlack Ethiopia.Customer Support and Relation department Report, 2022, p. 2 and 7

[122] Interview with Frehiwot G/hiwot, Chief Supply Chain Officer at PurposeBlack Ethiopia and Amauel Chala, PurposeBlack Electronic commerce and IT Division Director (2023, May 16).

sellers.[123] The Adhoc Investigation Taskforce has identified and penalized cases that involve acts of pre-arrangement, which may encompass the concept of cornering. These instances of pre-arranging trades have been subject to investigation and appropriate measures by the taskforce.[124]

Dumping refers to the practice of selling a product at a price lower than its market value or production cost.[125]

This behavior is commonly observed in online product trades, as sellers often prioritize selling the product without much concern for whether it is being sold at a fair or unfavorable price; hence, the traders sell contraband products to other traders with a cheaper price than the actual value of the Products[126] Such irrational act could be done with intent to shape future trades in certain fashion by marking the closing price.[127]

According to Amanuel Chala, there is a noticeable occurrence of selling commodities, particularly contraband coffee, at significantly lower prices. This practice is closely linked to distorted pricing, as sellers of contraband coffee offer it at much cheaper rates compared to its actual value or the price it would fetch in the regular market. If the coffee were not considered contraband, it could have commanded a higher price.[128]

Taking into account the statement mentioned earlier, Frehiwot G/hiwot and Amanuel Chala emphasized the actions taken by the Adhoc Investigation taskforce in penalizing the sale of contraband commodities at undervalued prices, deeming it as unrepresentative pricing. However, they also acknowledged that the number of cases addressed by the taskforce remains limited in scope. [129]

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[123] Ibid

[124] Ibid

[125] Prusa, T. J. (1992). Why are so many antidumping petitions withdrawn?. Journal of International Economics, 33(1-2), PP 1-20.

[126] PurposeBlack Ethiopia.Customer Support and Relation department Report, 2022, pp.10

[127] Ibid

[128] Interview with Sophia Negashi, Cheif Support Operation Officer at PurposeBlack Ethiopia (2023, May 16).

[129] Interview with Interview with Frehiwot G/hiwot, Chief Supply Chain Officer at PurposeBlack Ethiopia and interview with Amanuel Chala, PurposeBlack Electronic commerce and IT Division Director (2023, May 16).

According to the responses gathered, an average of 52.5% of the six online traders admitted to the presence of cornering and dumping practices within the Electronic commerce during trading activities.

2.2.7. Matching Orders

Before the introduction of the Multivendor Management system in 2022, brokers in electronic transactions had the ability to represent both buyer and seller clients. They were authorized to place identical buy and sell orders on behalf of their clients, enabling the matching of orders within the market.[130] This provision allowed traders to match buy and sell orders for their clients without considering price discovery and market competition. However, starting from May 2022, the ecommerce introduced a new regulation stating that brokers can only act as either a buyer or a seller. As a result, they are no longer allowed to represent both buyers and sellers in the market and match orders.[131]

However, there is still an exception within the Electronic commerce that permits brokers who are coffee buyers to sell by-product coffee. This exception applies when their clients have by-product coffee, which is intended for local consumption and obtained from the processing of export goods.[132] Let's take the example of a buyer intermediary member who procures a significant amount of leather on behalf of their client. The client utilizes the leather to produce leather shoes intended for export. However, during the manufacturing process, there might be instances where leather scraps or shoes that do not meet the required export standards are generated. These items are classified as by-products and are not suitable for export sale.

However, the Ecommerce's system provides a mechanism where the client can still sell these by-products, such as leather scraps or imperfect shoes, through their buyer intermediary member. In this case, if another buyer expresses interest in purchasing these by-products, they can place an order with the buyer intermediary member. Acting as both the buyer and the seller, the intermediary member can then match the buyer's order with the sell order from their client,

[130] Interview with Amanuel Chala, PurposeBlack Electronic commerce and IT Division Director (2023, May 16).

[131] Official Email Conversation with Amanuel Chala, PurposeBlack Electronic commerce and IT Division Director (2023, May 16).

[132] Interview with Amanuel Chala, PurposeBlack Electronic commerce and IT Division Director (2023, May 16).

enabling a seamless transaction and ensuring efficient utilization of the by-products within the market.

According to Amanuel Chala, such loophole of trading as both buyer and seller paves a wider room for traders to match buy and sell orders of their clients as they wish; without any regard to competition and formal bargaining process[133] On such cases, traders could manipulate price of transaction, liquidity of commodities and price range since one trader can act as both buyer and seller who sets price for the transaction without going through bargaining[134] If the transaction had two traders representing buyer and seller, the market could entertain normal bargaining process a better competition.[135]

Furthermore, the practice of matching orders can lead to a reduction in competition as traders have the ability to submit identical orders simultaneously. This can result in swift execution of transactions through the Electronic commerce, which promptly matches the best available buy and sell prices. As a consequence, the traditional process of price discovery and competitive bidding may be bypassed, potentially affecting the overall competitiveness of the market.[136] Ergo, other competitive sellers couldn't sell their Products or buyers may not be able to purchase the Products being matched by the traders who represents both sides.[137] (2), the traders who matches the two orders can set price and determine prices of future trades, (3), unless they act rationally their act could disrupt the price discovery system and it may also feed false or unrepresentative trade information.[138]

Both Amanuel Chala and Frehiwot G/hiwot acknowledged that in the past, individual traders were allowed to act as both buyers and sellers. However, due to the potential for anticompetitive behavior, the Electronic commerce has implemented a recent prohibition on trading on both sides.[139] However, there is still a legal loophole by which a single trader could act as both buyer

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[133] Interview with Amanuel Chala, PurposeBlack Electronic commerce and IT Division Director (2023, May 16).

[134] Ibid

[135] Spulber, D. F. (1999). Market Microstructure: Intermediaries and the Theory of the Firm. Cambridge University Press. PP 45-46

[136] Adhoc Investigation Task force Report, Purposeblack Ethiopia. 2022. Pages 2 and 6.

[137] Ibid

[138] Ibid

[139] Interview with Frehiwot G/hiwot, Chief Supply Chain Officer at PurposeBlack Ethiopia and Amauel Chala, PurposeBlack Electronic commerce and IT Division Director (2023, May 16).

and seller while trading a by-product coffee.[140] Such matching orders by a single trader are strictly checked and recorded and there is a chance for the concerned divisions to forward anticompetitive matching orders to Ad hoc Investigation Committee.[141]

According to the interviews conducted, an average of 52.5% of the six online traders confirmed that the matching of orders is considered one of the Anticompetitive Unilateral Acts that the Electronic commerce has encountered or is currently facing.

In general, the collected data highlights the following key points: (1) The Electronic commerce encounters various Anticompetitive Unilateral Acts that are not specifically addressed in Article 8 of the Trade Competition and Consumer Protection Proclamation, which primarily focuses on matters of Unfair Competition.[142] (2) Anticompetitive Unilateral Acts in the Electronic Trading involve activities such as technical price manipulation, withholding pre-trade information, questioning the authenticity of submitted orders, and manipulating current or future transactions. These acts differ from the acts of unfair competition listed under Article 8 of Proclamation No. 813/2013, which primarily aim to protect consumers and safeguard the intellectual property rights of traders. (3) The Anticompetitive Unilateral Acts faced by the Electronic commerce have a direct impact on market competitiveness, the dissemination of prices, and the accurate discovery of ordinary prices based on factors such as demand, supply, and other economic indicators.

The Adhoc Investigation taskforce, in collaboration with the Chairman of the taskforce from the Customer Support and Relation Management department, has confirmed that there have been no filed charges specifically related to Pace Making, Marking the closing price, and cornering commodities. However, the taskforce acknowledges the presence of all seven mentioned anticompetitive acts in the market, even if formal charges or incidents have not been documented for certain acts.

Since the Ecommerce is the best market place where transactions on the different valuable and fashion items are facilitated,[143] the more the products face Anticompetitive Unilateral Acts; it is

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[140] Ibid

[141] Ibid

[142] Proclamation No. 813/2013

[143] Frehiwot G/hiwot, Chief Supply Chain Officer at PurposeBlack Ethiopia, and Amauel Chala, PurposeBlack Electronic Commerce and IT Division Director, were interviewed on (2023, May 16).

tougher for traders, small scale fanners and even the country to reap the benefits of competitive market. Anticipating significant challenges in the e-marketing sector for the country is justified, especially when the primary marketplace responsible for facilitating competitive trades in vital exportable commodities like shoes and leather products fails to achieve its objectives due to the prevalence of Anticompetitive Unilateral Acts. These acts not only undermine fair competition but also disrupt market dynamics and impede the growth and progress of the e-commerce industry.[144]

The table summarizes statements of the company's Management with regard to Anticompetitive Unilateral Acts observed on the Exchange's Electronic commerce.

Description	Addis Mercato	Helloo Market	DHL Africa eShop	Mercato Online
Flash Crashing	√	√	√	√
Unrepresentative Pricing	√	√	√	√
Pre-Open	√	√	√	√
Pace Making	√	√	√	√
Marking the Close	√	√	√	√
Corner and Dump	√	√	√	√
Matching Order	√	√	√	√

Table I

Remark: this symbol (√) represents Admitting /Acceptance of existence of the Anticompetitive Unilateral Act in question.

2.3. Provisions regarding Anticompetitive Unilateral Acts under the Ethiopian Competition Regime

2.3.1. Jurisprudential Development of Unfair Competition

Since the term 'Unfair Competition,[145] under Ethiopia Competition Regime is the only rule which resembles to Anticompetitive Unilateral Act, it is important to have a highlight on the jurisprudence of the term.

The concept of Unfair Competition has its roots in the Paris Convention for the Protection of Industrial Property, an international agreement that has been in force for over a century. The

[144] Ibid

[145] Proclamation No. 813/2013, cited above at note 16, Art. 8 (2)

convention prohibits any practices of competition that are contrary to honest commercial or industrial practices.[146] Specifically, the Paris Convention for the Protection of Industrial Property, which has been in existence for over a century, defines the term "Unfair Competition" as encompassing any act of competition that is contrary to honest practices in industrial or commercial matters. This includes actions that cause confusion with a competitor's goods or industrial/commercial activities, making false allegations that discredit a competitor's goods or industrial/commercial activities, and acts that mislead the public as to the nature, purpose, manufacturing process, or characteristics of goods. In fact, the rules of unfair competition contained in the Paris Convention have also influenced the trade mark laws of countries like the United States of America.[147]

Even though some may argue that the scope of unfair competition is being/has been extended to apply to any misappropriation of what equitably belongs to a competitor, in American Federal courts, unfair competition is judged to be a euphemism/a convenient name for the doctrine that no one should be all owed to sell his goods as those of another.[148] Rudolf Callmann explains that unfair competition is a theory which protects trademarks/similar devices adopted by the plaintiff, registered or not will be protected against simulation by a competitor which violates the rules of fair competition and does injury to the plaintiff.[149] Similarly, Charles Grove Haines mentioned that despite recently widening its scope to address 'any conduct to the part of one trader which tends unnecessarily to injure another in his business', unfair competition was defined in the dictum that " nobody has any right to represent his goods as the goods of somebody else" and the term has been used for the first time in courts' attempt to ensure protection of trademarks.[150]

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[146] Paris Convention for the Protection of Industrial Property, (March 20, 1883), Art. 10 bis (available at: https://www.unido.org/sites/default/files/2014-04/Paris_Convention_0.pdf (Hereinafter cited as 'Paris Convention').

[147] Patricia V. Norton, "The Effect of Article 10 bis of Paris Convention on American Unfair Competition Law". Fordham Law Review. Vol. 68, Issue 1 (1999). p.225 (American Tracie mark law (Lanham Ac t of 1946 provide rules which prohibit acts of unfair competition such as: likelihood of confusion, misrepresentation and misappropriation).

[148] Rudolf Callmnnn. 'Trade-Mark Infringement and Unfair Competition', Law and Contemporary Problems, p 176 & 177 and 186 (Available at: https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2403&context=lcp).

[149] Rudolf Callmann, "Trade-Mark Infringement and Unfair Competition," Law and Contemporary Problems, pp. 185-186. (Available at : https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2403&context=lcp).

[150] Charles Grove Haines. "Efforts to Define Unfair Competition." Yale Law Journal, vol. 29, no. 1 (1919), p. 2.

Ergo, scrutiny of the aforementioned statements/arguments coupled with the fact that unfair competition rules came into picture before enactment of even the two pioneer competition laws of America and Canada;[151] shows that unfair competition is more of intellectual property related rule, which developed through an effort to protect business rights such as trademark, trade name and indication, rather than being anticompetitive rule per se.

2.2.2. Anticompetitive Unilateral Acts and the Rules under Ethiopian Competition Regime

The Trade Competition and Consumer Protection Proc. No. 813/2013 (referred to as 'the proclamation') aims to protect the business community from anticompetitive and unfair market practices and consumers from misleading market conduct. The proclamation's objective is divided into three categories: prohibiting anticompetitive acts, prohibiting unfair market acts, and prohibiting customer misleading acts. Therefore, it is evident that the proclamation distinguishes between anticompetitive acts, unfair competition practices, and customer misleading acts in the market.

Article 8 of the proclamation focuses on providing rules for 'unfair competition' while chapter three of the same proclamation devoted itself to address consumer protection rules which prohibit customer misleading market practice. Despite having rules for Abuse of Dominance, Anticompetitive Merger, Anticompetitive Agreement/concerted decisions, the proclamation failed to clearly provide rules for Anticompetitive Unilateral Acts which could be done without being dominant market actor or misleading customers or through merger or agreements as specified under proclamation.[152] Upon careful examination of the proclamation, it becomes apparent that there is no specific provision explicitly addressing Anticompetitive Unilateral Acts. However, Article 8 appears to be the closest provision in addressing such acts within the framework of the proclamation. Hence, it is advisable to conduct a comprehensive analysis and evaluation of the substantive content of Article 8 to ascertain its adequacy in addressing Anticompetitive Unilateral Acts.

[151] "A Reappraisal of the Canadian Anti-Combines Act of 1889." Cited in Note 4, pp. 128-130.

[152] Proclamation No. 813/2013. Articles 5-6: Abuse of Dominance, Article 7: Anticompetitive Agreement, Articles 9 13: Regulation of Merger, Articles 13-22: Protection of Consumers.

2.2.3. The content and substance of the unfair competition rules in Ethiopia

For better clarity and understanding, it is recommended to analyze and explore the regulations stipulated in Article 8 of the proclamation individually.

Article 8 (1)

This particular article serves to prohibit unfair competition and potentially includes a definition for the term 'unfair competition'.

The provision states that engaging in dishonest, misleading, deceptive acts that can harm or potentially harm the business interests of a competitor is strictly prohibited. The article does not explicitly address competition or the prohibition of anticompetitive acts. Rather than specifically targeting competition or anticompetitive acts, the focus of the article is on prohibiting acts that are dishonest, misleading, and deceptive, which have the potential to harm competitors or their business interests. Therefore, Article 8(1) seems to prioritize safeguarding the private business interests (goodwill) of market actors instead of fostering competitive trading practices and prohibiting anticompetitive acts. Even when considering this sub-article as a competition rule, it raises inquiries about whether every dishonest, misleading, and deceptive act that may or may not harm competitors' interests in the market will be deemed anticompetitive and have a negative impact on competition. For example, an electronic company may attempt to discredit its competitor by asserting that the competitor's products are of inferior quality and lack necessary features. Consequently, this can result in economic losses for the targeted competitor. While such acts may fall under private laws like contract and tort laws, the actions of the perpetrator may not necessarily have a significant impact on overall competition or competitive trading practices in the market. Irrespective of the level of competitiveness in the market, companies may resort to using misleading and dishonest tactics to discredit their competitors and promote their own products and services, aiming to gain a competitive edge.

Reflecting on the article's focus on securing traders' private interests, it instigates a significant question concerning the fundamental role of competition law: Does it mainly serve as an enforcement tool for market actors' private rights, or does its primary function lie in public law, aiming to mold the market in a particular way? Competition law, although it does contribute to safeguarding the private interests of traders, is fundamentally considered a public law that governs the functioning of a state. It extends beyond being a form of private regulation solely focused on governing the private market.[153] The public nature of competition law can be perceived as a fundamental aspect of political regulation, entailing the delicate task of balancing both public and private interests.[154] Regrettably, the mentioned article appears to emphasize the private aspect of competition law rather than acknowledging its essence as a public law framework. As an illustration, the focus on preserving a competitive free market, as expressed in Article 3(1) of the proclamation, can be interpreted as a public policy decision rather than a mere private regulation. Governments hold a pivotal role in shaping the market's nature, which underscores the selection of a competitive free market as a decision more aligned with public law, governing market actors and stakeholders as a cohesive entity. Therefore, the preceding statements and arguments imply that Article 8(1) does not directly target competition-related matters; instead, it primarily concentrates on protecting the rights and interests of traders from violations perpetrated by other traders' actions.

Article 8(2)(a) and (b) pertain to confusion and disclosure or use of information.

Article 8 (2) (a) specifically addresses acts that cause confusion between someone else's business or commercial activities and another. In simple terms, this article prohibits traders from engaging in activities that would create confusion between their own businesses and others. This provision serves as protection for both traders and consumers for the following reasons: (1), Protection of Traders: Article 8(2)(a) ensures that traders and their goodwill are safeguarded from deceptive practices by their competitors. It prohibits attempts to misrepresent or pass off someone else's goodwill as their own. This includes the prohibition of actions that could lead to confusion, such as the unauthorized use of trade names or trademarks.[155] (2), Consumer Protection: The prohibition outlined in Article 8(2)(a) benefits consumers by enabling them to make informed decisions without being misled or confused by traders. By preventing deceptive practices related to trade

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[153] Michael W. Dowdle, "On the Public-Law Character of Competition Law: A Lesson from Asian Capitalism," National University of Singapore Law Working Paper Series, No. 2014/004, 2014, p. 6. (Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2434469)

[154] Ibid

[155] Trade Mark Registration and Protection Proclamation 2006, Preamble, Proc. No. 501, Neg. Gaz. Year 12, No. 31, [The preamble highlights the necessity to safeguard the goodwill of business persons by protecting their trademarks from confusion between similar goods/services].

names and trademarks, consumers can have confidence in their choices and trust that they are not being manipulated or misled.

The primary objective of the aforementioned article is to safeguard the reputation and interests of traders while promoting informed consumer decision-making, free from confusion. However, it does not explicitly indicate its intention to prohibit Anticompetitive Unilateral Acts or address anticompetitive trading practices.

Furthermore, the jurisdiction for addressing the aforementioned prohibition is likely to be governed by the Trademark Registration and Protection Proclamation,[156] Comm Code[157], and Extra Contractual law which prohibits false publication and other acts contrary to good faith.[158] Therefore, it seems that the proclamation redundantly reiterates rules from different legislations to regulate private matters, rather than specifically addressing Anticompetitive Unilateral Acts. Additionally, it is important to note that the Criminal Code of the country already criminalizes acts that lead to confusion with goods, dealings, products, or commercial activities.[159]

Article 8 (2) (b) of the proclamation establishes a provision that prohibits the possession, disclosure, or use of another business person's information without their consent, in a manner contrary to honest commercial practices. While the proclamation does not explicitly define what qualifies as "information," it is necessary to refer to other relevant documents for clarification. The 1985 Uniform Trade Secret Act offers a description of "Trade Secrets," defining them as information that encompasses formulas, patterns, compilations, programs, devices, methods, techniques, or processes that provide economic advantage by not being publicly known.[160] Thus, information can be understood as confidential trade secrets whose disclosure could lead to economic loss for the owner. The acquisition, disclosure, or use of such trade secrets without the

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[156] Ibid

[157] Comm. C. Art. 133 (Cases of Unfair Competition) and Art. 138 (Assumed Trade name and prohibition of confusion of trade names) [see footnote 20].

[158] Civ. C. Art. 2057 [see footnote 18].

[159] The Federal Democratic Republic of Ethiopia Criminal Code. (2004). Article 719 (b). [hereinafter cited as 'Crim. C'].

[160] UNIFORM TRADE SECRETS ACT WITH 1985 AMENDMENTS (August 1985), Definition of 'Misappropriation and Trade Secret'. (available at: http://ipr.mofcom.gov.cn/hwwq_2/zn/America/Usa/file/UTSA_final_85.pdf) (Last Accessed: February09, 2023)

implied or direct consent of the owner is deemed as the "misappropriation" of the trade secrets of traders.[161] Ironically, the Ethiopian Criminal Code contains a provision that prohibits the disclosure or exploitation of trade secrets that have been obtained or revealed in a manner contrary to good faith.[162]

Upon thorough examination of the definition and a careful analysis of the sub-article in the proclamation alongside the corresponding criminal rule, it can be argued that Article 8(2)(b) primarily aims to protect the private rights of traders, particularly regarding trade secrets, rather than directly addressing Anticompetitive Unilateral Acts as a competition rule.

Therefore, these sub-articles predominantly prioritize the protection of private rights of traders instead of actively influencing the competitive culture in markets or prohibiting Anticompetitive Unilateral Acts.

Article 8 (2) (c) and (d): False Allegation and False / Equivocal Commercial Advertisement

Article 8 (2) (c) of the proclamation prohibits the making of false or unjustified allegations that tarnish the reputation of a trader's business activities or the goods/services they provide. While this article does not explicitly mention the prohibition of Anticompetitive Unilateral Acts, its focus lies in preventing false statements that harm the goodwill of other traders. Interestingly, a similar provision can be found in the Ethiopian Comm Code, which addresses false statements made in business with the intention to discredit a competitor's enterprise, products, or commercial activities.[163]

Moreover, the Commercial Code offers a remedy by referring to Article 2122 of the Ethiopian Civil Code, which allows for the retraction of false allegations. Furthermore, the Criminal Code of the country recognizes the act of discrediting the goods, transactions, or commercial activities of other traders as a crime, punishable by fines and imprisonment.[164] However, the current competition law includes the prohibition of false allegations as a competition rule, but it primarily focuses on protecting the private economic rights and goodwill of traders.

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[161] Ibid

[162] Crim. C., Article 179(e).

[163] Comm. Code. Art. 133

[164] Comm. Code. Art. 179 (a)

Article 8(2)(d) of the competition law prohibits false or misleading comparisons of goods/services in commercial advertisements. However, this raises questions regarding its relationship with advertisement laws and competition laws. To gain a clearer understanding, it is necessary to examine the country's advertisement proclamation. According to Article 8(8) of the Advertisement Proclamation, advertisements that undermine competitors through product/service comparisons may result in fines up to 150,000 birr, unless other laws impose stricter penalties.[165] The inclusion of Article 8(2)(d) in the competition law seems redundant as the Advertisement Proclamation already covers "unfair content/misleading advertisement" with penalties for violations. Therefore, Article 8(2)(d) appears to overlap with existing laws that address commercial advertisement matters. Moreover, it does not specifically address Anticompetitive Unilateral Acts, raising questions about its relevance within the competition law framework.

The aforementioned sub-articles, 2(c) and (d), do not explicitly prohibit Anticompetitive Unilateral Acts. Rather, they focus on addressing false allegations and misleading advertisements targeting traders. Therefore, these sub-articles do not provide specific rules to combat Anticompetitive Unilateral Acts as intended.

Article 8 (2) (e) and (f): Disseminating False/Equivocal information to Customers/Users and Obtaining or Attempting to Obtain Confidential Information of another Business

The dissemination of false or equivocal information to consumers or users, with an unknown source, related to the price, nature, manufacturing system, manufacturing place, content, suitability for use, or quality of goods/services is considered an act of unfair competition.

The prohibition appears to be a protective measure for consumers, ensuring they are not misled by false or equivocal information. Part Three of the same proclamation, on the other hand, focuses on safeguarding consumers by providing them with sufficient and accurate information or explanations regarding the quality and type of service they are purchasing.[166]

Chapter Three of the proclamation outlines specific requirements for displaying prices and affixing labels on goods offered to consumers.[167] Furthermore, Article 3(2) of the proclamation explicitly

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165 Advertisement Proclamation. (2013). Proclamation No. 759. Negarit Gazeta, 18(59), Art. 8(8) and 34(1)(c).

166 Proclamation No. 813/2013. Art. 14 (1)

167 Ibid

indicates that ensuring the safety and suitability of goods and services, as well as their value for the price customers pay, is a matter of consumer protection rather than competition. Additionally, Article 19 of the proclamation prohibits false commercial advertisements that mislead customers regarding the nature, components, volume, method, and date of manufacturing, among others. Therefore, Article 8 (2) (e) appears to be primarily geared towards consumer protection rather than addressing Anticompetitive Unilateral Acts.

Article 8 (2) (f), similar to Article 8 (2) (b), establishes rules to safeguard traders' confidential information (trade secrets) from being acquired by other traders through their former or current employees. It also prohibits traders from poaching customers of other traders using the latter's trade secrets, which could reduce the competitive edge of the original trader. However, this article primarily serves as a protection for trade secrets rather than being a direct competition rule. It incidentally touches upon the concept of reducing competitiveness among traders due to such acts.

According to the World Intellectual Property Office, a trade secret refers to "confidential business information that gives a competitive advantage to a company."[168] Losing trade secrets can lead to economic losses for traders or companies as competitors may exploit the disclosed information, jeopardizing the trade secret owner's dominance. However, trade secret protection alone does not qualify as a competition law against Anticompetitive Unilateral Acts. Therefore, it is difficult to argue that Article 8(2)(f) is an appropriate competition law specifically targeting the management of Anticompetitive Unilateral Acts to promote a competitive trading environment.

Like the previous sub-articles, sub-articles 2 (e) and (f) in Article 8 primarily aim to protect the private interests of traders, ensuring they are not affected by false information dissemination or unauthorized use of their trade secrets. These provisions may not directly target Anticompetitive Unilateral Acts as specific competition regulations.

168 World Intellectual Property Organization. (n.d.). IP Panorama: Learning Points. Available at: https://www.wipo.int/export/sites/www/sme/en/documents/pdf/ip_panorama_4_learning_points.pdf [Accessed 20 Feb. 2023].

Article 8 (2) (g): Other Similar Acts Specified by Regulation to be issued for the Implementation of the Proclamation

The drafting of this article suggests that there may be additional acts of unfair competition that are not specifically listed in the proclamation. Article 8 serves as an illustrative article and does not cover all possible acts of unfair competition. Regulations play a role in implementing the proclamation, which is adopted by the supreme organ of the government, the House of People Representative.

Regulations, as secondary to primary laws (proclamations), serve as subordinate legislation that aids in effectively implementing the provisions of proclamations while adhering to the rules and standards set forth in the primary law.[169]

Nonetheless, the Trade Practice and Competition Proclamation has created an avenue for executive regulations, which, when legislated to implement the proclamation, can designate additional acts of unfair competition. Therefore, Article 8(2)(g) grants the executive the authority to include other acts freely under the category of unfair competition.

In essence, this article grants the executive branch unrestricted freedom to expand the list of acts considered unfair competition as it sees fit, which could potentially lead to abuse of power due to its unlimited legislative authority.

Moreover, the existing competition regime lacks adequate regulations to properly enforce the rules specified in the proclamation. Consequently, only the acts explicitly mentioned under Article 8 of the proclamation are deemed as acts of unfair competition. This reveals a gap in the law that requires attention and resolution.

Therefore, based on the study, it is evident that this particular sub-article is not yet operational and provides a broader scope for the inclusion of various acts as acts of 'unfair competition'.

2.3. Suitability/Adequacy of Ethiopian Competition Regime's Unfair Competition Rules to Address Anticompetitive Unilateral Acts in Ethiopia Ecommerce

After thorough examination of the provisions concerning unfair competition in Article 8 of the Trade Competition and Consumer Protection Proclamation, it becomes apparent that these

[169] Tesfaye Abate, introduction to Law and Ethiopian Legal System: Teaching Material (2009), pp. 127 - 131

regulations are primarily focused on addressing deceptive, fraudulent, and misleading practices related to brands, trademarks, and trade names, among others.

The acts described mainly pertain to the infringement of intellectual property rights, rather than being solely classified as strict competition regulations.[170] Harka Haroye's concise article highlights that a considerable number of cases handled by the Trade Competition and Consumer Protection Authority involve unfair competition, centering around private disputes concerning intellectual property rights.[171]

The author also suggests that focusing on cases of unfair competition primarily revolving around private disputes over intellectual property rights may have minimal impact on the country's economy and market dynamics. Therefore, directing significant resources and time towards such cases through the Trade Competition and Consumer Protection Authority might not yield optimal efficiency.[172] According to Harka Haroye's statement, acts of unfair competition seem to be more about private matters than directly related to competition. These issues can be adequately addressed through private right enforcement mechanisms. As of now, there is no available evidence to suggest otherwise.

The classification of acts as unfair competition mainly involves violations of private rights, particularly in the context of intellectual property rights and unfair trade practices. Existing laws like the Criminal Code, Commercial Code, Advertisement Proclamation, and Civil Code already address these acts. However, considering the historical evolution of unfair competition regulations, it is reasonable to argue that the rules in the proclamation do not adequately address Anticompetitive Unilateral Acts. Despite the inclusion of provisions related to unfair competition and the infringement of intellectual property rights by traders in the Trade Competition and Consumer Protection Proclamation of Ethiopia, they might not be adequate to effectively handle the Anticompetitive Unilateral Acts witnessed in the country's Electronic Trading. These acts involve transaction manipulation, price manipulation, order manipulation, and disclosure of trade information, which go beyond the scope of protecting intellectual property rights. To comprehensively address such practices in Electronic commerce, a broader examination of competition rules and regulations is essential.

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[170] Harka Haroye, pp. 44 - 46 see footnote 36

[171] Ibid

[172] Ibid

Chapter Three

Addressing Anticompetitive Unilateral Acts in E-commerce within the Competitive Law's Regime: Evaluating Challenges in the Current Competition Framework

6.1. Measures and Practices for Addressing Acts of Unfair Competition under Ethiopian Competition Laws

This Chapter explores the Ethiopian Competition law and Ethiopia Ecommerce rules in the context of Anticompetitive Unilateral Acts within the Electronic commerce. The research question revolves around how these acts are addressed by competition laws, the practical challenges involved, and the alignment of measures with competition law rules.

In the preceding section, we investigated how the unfair competition rule in Ethiopian competition laws contrasts with the Anticompetitive Unilateral Acts witnessed in the domain of Electronic commerce. Nevertheless, if someone were to make the case that the unfair competition rule within the competition regime could potentially cover Anticompetitive Unilateral Acts, particularly in the context of Electronic commerce, it becomes crucial to scrutinize whether the measures taken against such unfair acts align with the specific rules governing E-commerce and targeting Anticompetitive Unilateral Acts.

In summary, the measures taken against unfair competition under the competition regime encompass administrative actions, compensation, fines, and criminal penalties.[173] Administrative measures are utilized to tackle violations of the rules stipulated in Chapter Two of the proclamation, which includes acts of unfair competition. These measures encompass ceasing the unfair competition act, implementing suitable remedies to restore competitiveness for victims of unfair competition, and, in some cases, suspending or revoking the business license of the offenders.[174]

The second measure to address unfair competition involves providing compensation to the victim of the unfair competition act. This measure is executed in accordance with the relevant laws governing compensation.[175] The third measure entails imposing fines on traders involved in acts

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[173] Proclamation No. 813/20 13. Art. 32. 42 and 43

[174] Ibid

[175] Ibid

of unfair competition. The fines imposed can range from 5% to 10% of the perpetrator's annual turnover.[176] Lastly, the proclamation provides for criminal penalties in cases of unfair competition. Offenders may face a fine ranging from 5,000 to 50,000 Birr, along with the possibility of simple imprisonment for engaging in such acts.[177]

After summarizing the rules of the competition regime in the previous discussion, a similar approach is needed to understand how transactions address Anticompetitive Unilateral Acts under their rules. To ensure clarity, this study will now analyze the rules outlined by the regulations of Electronic commerce concerning the handling of Anticompetitive Unilateral Acts, as explained below.

a. Rules against Flash Crashing

Even though Ethiopian competition laws do not explicitly define "Flash Crashing", actions involving deceptive or unfair transactions that undermine the predictability of E-commerce could possibly be categorized under competition laws. These laws prohibit traders from activities that could be harmful to trading interests, tarnish the reputation of trading or violate fair and equitable trading principles. In the context of E-commerce, such activities could be perceived as a 'flash crash', drawing analogies from the definitions provided in the commodity exchange rules.[178] Alternatively, it may also fall under the rule prohibiting any act of trading in a fraudulent manner or engaging in unfair trade practices, including market manipulation.[179]

A well know deceptive practices that could potentially occur in any electronic trading system, including in e-commerce platforms is a landmark case in the United States, a futures trader named Navinder Singh Sarao was charged with market manipulation in 2015, which reportedly contributed to the 'Flash Crash' of May 6, 2010. Sarao had used an automated trading program to generate large sell orders, creating an illusion of increased supply in the market. When other market participants reacted to this 'spoofed' information, it triggered a rapid sell-off in the market,

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[176] Ibid

[177] Id

[178] Biruk P.(2015)."The Legal Architecture for E-Commerce in Ethiopia: Lessons from the EU Experiences’’pp 47-74

[179] Russell, A. (2013). "The Ethiopian Commodity Exchange (ECX): An overview." Project Document, UNIDROIT. (Available at: https://www.unidroit.org/89-news-and-events/2138-study-80cg-3)

leading to a severe crash. Sarao allegedly profited from this volatility by trading against the distortion he had created, selling high before the crash and buying low during the crash. This case was significant because it highlighted the vulnerabilities of electronic trading systems to manipulative practices like spoofing.[180]

Therefore, considering that this act violates the competition laws' rules, which prohibit trading (buying/selling) in a fraudulent manner and goes against the best interests of the trading, impairing the good name of the E-trader, and being inconsistent with just and equitable principles of trade, the Adhoc investigation team has recommended measures ranging from a written warning to termination of the contract with the e traders who acted against the members.

The Trade Competition and Consumer Protection Proclamation specifies a minimum and maximum fine range (5,000 birr and 50,000 birr, respectively). However, the rules of ecommerce traders and the competition laws do not provide such a range; consequently, the fine may be either lesser or greater than the fine stipulated in the proclamation.[181] This difference can be considered concerning unilateral anticompetitive rules between the Trade Competition and Consumer Protection Proclamation.

b. Rules against Unrepresentative Pricing

Despite the absence of any provisions in the Ethiopian competition laws explicitly prohibiting the manipulation of product or service prices to create false prices or artificial liquidity, the Products exchange's rules encompass five specific provisions addressing such practices.[182] Although Article 6.6 (f) of the Exchange's rules generally prohibits attempts or acts of manipulating Products prices, Article 14 provides detailed provisions stating that traders are prohibited from: (1) making bids or offers with the intention of creating a false or misleading appearance regarding the market or Products prices, (2) engaging directly or indirectly in transactions that could artificially raise or

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[180] U.S. Commodity Futures Trading Commission. (2015). CFTC Charges U.K. Resident Navinder Singh Sarao and His Company Nav Sarao Futures Limited PLC with Price Manipulation and Spoofing. (Available at: https://www.cftc.gov/PressRoom/PressReleases/pr7156-15 [Accessed 28 Jul. 2023].

[181] Id. see Footnote 140, Trade Competition and Consumer Protection Proclamation.

[182] Ethiopian Commodity Exchange. (2018). Revised Rules of Ethiopian Commodity Exchange Art. 6.6 (f), 14.5. 1.2 (a), 14.6.2 and 14.6.3

depress Products prices, and (3) participating in any act designed to create a false or misleading appearance of trading, leading to non-genuine price reflections.[183] Given that Unrepresentative Pricing is highlighted as an act that involves creating artificial prices and liquidity for goods and services,[184] it can be argued that the Electronic commerce has taken measures to regulate such pricing. An illustrative charge presented by the Investigation and Enforcement Division of the Products Electronic commerce exemplifies how the Electronic commerce handles cases related to Unrepresentative Pricing.

A charge[185] with a file No. 002 indicates that on March 22, 2018, a seller member sold 50 units of electronic gadgets owned by the client, TechZone Electronics Store, with an unrepresentative price of 3000 birr. The seller's actions were as follows: (1) failed to prudently utilize the bargaining time to secure a better price for the electronic gadgets, (2) drastically reduced the selling price from 8000 birr to 3000 birr through a single editing, resulting in a decrease of 5000 birr, (3) created a significant price difference of 4000 birr between two models of the same electronic gadgets, which in a regular trade would only have a maximum difference of 500 birr, thereby generating an artificial liquidity of the Products, (4) the selling price of 3000 birr highly deviates from the last closing price for the same gadgets, which was 7000 birr on January 22, 2017, and (5) historical trade data from January 01, 2018, to May 1, 2018, shows that the same electronic gadgets have been sold with prices ranging from 7000 birr to 9000 birr.

Therefore, based on the aforementioned reasons, the seller's actions are deemed to be unrepresentative pricing, which harm the interests of the client and undermine the integrity of the Exchange's price discovery process. An examination of the case reveals that the seller negligently or intentionally sold the client's electronic gadgets at an exceptionally low and unrepresentative price compared to previous trade records.

[183] Ibid

[184] Id. See footnote 58.

[185] PurposeBlack Ethiopia. Ad hoc Investigation Team Charge No. 002. March 2018. Unpublished.

c. Rules against Failure/Refusal to Submit Pre-open Session Order Crashing

Although the trading rules do not expressly prohibit trading without a pre-open session order, it is still mandatory for traders to adhere to this requirement. Failure to comply with this rule may result in accountability measures being imposed.

As a response to deceitful or fraudulent acts committed in an attempt to execute trade, Purposeblack Ethiopia implements appropriate disciplinary actions. The wrongdoer may receive a written warning and/or termination of the contract. Additionally, the trader might be required to attend training sessions on trading rules at their own expense.[186]

d. Rules against Pace Making

As discussed earlier, Pace Making involves submitting trade orders without the intention of actual trading. Instead, the purpose is to create an artificial price and liquidity of goods/services in the market.[187] Given that the act is directly connected to creating artificial price and liquidity of goods and services, it is essential to assess any competition laws and company regulations that specifically prohibit such conduct.

In the existing Ethiopian regulations and laws specifically addressing competition issues, Pace making is not explicitly mentioned except under Article 14.6.2 of the commodity Exchange's rules. These rules, which apply to commodity exchanges, explicitly prohibit traders from participating in transactions that might artificially inflate or lower commodity prices.[188]

This article provides a suitable framework to tackle concerns related to artificially manipulating the prices of commodities, including pace making. Additionally, Article 6.6 (j) of the same rule prohibits traders from engaging in trades that artificially create liquidity for commodities. As such, these regulations can be applied to the context of e-commerce, given the lack of explicit provisions in other competition laws of the country.[189] Despite Article 6.6 (j) explicitly prohibiting 'executing trades', one could argue that this rule could also be applicable to pace making in e-commerce. Pace

[186] Id. See footnote 156

[187] Id see Footnote 27

[188] Ethiopian Commodity Exchange. (2018). Revised Rules of Ethiopian Commodity Exchange (pp. 1-3).

[189] Ibid

making involves rushing or slowing down the pace of bargaining, and later canceling orders to artificially influence the price and liquidity of a Products. Even if the trades are not executed, traders attempting or succeeding in influencing the price or liquidity of a Products should be held accountable for their actions. Therefore, the provisions in Article 6.6 (j) could be extended to address pace making in the context of e-commerce as well.

Whether in traditional trading or e-commerce, pace making can result in the registration of false prices by the trading. These false prices may significantly impact the analysis of market demand and supply because they do not genuinely reflect the intentions of the traders. Article 6.4.4 of the Exchange's rules explicitly states that entering into or confirming the execution of any transaction with the purpose of causing false price reporting, registration, or recording is a violation of the rules. This provision applies to both traditional and electronic trading, ensuring fair and genuine price discovery in the market.

There are no recorded judicial decisions related to Pace making in Ethiopian courts. However, a recorded incident from the Commodity Exchange's Market involves Pace making in the commodity exchange market. In this incident, a buyer was found manipulating the market by submitting false orders, artificially inflating the price of a product. The buyer began by placing an order at a lower price, progressively editing the order until it reached a higher price, before eventually canceling it. This caused other buyers to follow the pattern, resulting in trades being executed at the artificially inflated price.

This behavior clearly violates the rules of the exchange, which explicitly prohibit creating artificial prices and liquidity for commodities. If the buyer had genuine intentions, they wouldn't have canceled the order even if other buyers offered a better price. Thus, this incident can be considered an Anti-competitive Unilateral Act in the context of e-commerce.

Since violating the rules stated in both Article 6.6 (f) and Article 14.6.2 (regarding artificially influencing price and liquidity of commodities) is considered category three rule violations, the company could take appropriate measures for such violations as clearly provided in Article 15.3.3. These measures can be applied to both traditional trading scenarios and e-commerce platforms, ensuring fair competition and preventing any attempts to manipulate prices or liquidity, regardless of the trading method used.[190]

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[190] Id see Footnote 146

Therefore, upon examining the aforementioned rules of the Electronic commerce and the incident discussed, it can be argued that the Electronic commerce does indeed have legal provisions in place to address pace making effectively.

e. Rules against Marking the Closing Price

Marking the closing price of a Products with a higher or lower price in the context of e-commerce is primarily done to control future trade prices of the Products in question. This act involves manipulating prices of subsequent trades by altering current trends during a given trading session. As previously explained, the Electronic commerce maintains price regulation for commodities, allowing only a 5% maximum and minimum fluctuation from the previous trade date's closing price. Traders may attempt to manipulate future trading prices by tampering with or manipulating the previous closing price of the Products, aiming to execute future trades at cheaper or more expensive rates. Consequently, this act can be considered as an anticompetitive practice relating to price manipulation.

The Products Exchange's rules, particularly Article 6.6 (f), explicitly prohibit the manipulation or any attempt to manipulate the price of a Products. Moreover, upon cumulative examination of Article 6.4.4 and 14.5.1.2, it is evident that it is forbidden to execute transactions that lead to the reporting, registration, or recording of any untrue or non-bona fide price, and to create false or misleading appearances in relation to the market or Products prices. Since the above rules fall under category three rule violations, the Products Electronic commerce can apply the measures outlined in Article 15.3.3 to address such anticompetitive acts effectively. Therefore, the rules set by the Products Electronic commerce can be applicable to tackle price manipulation in the e-commerce setting.

f. Rules against Cornering and Dumping

i. Cornering

Cornering is defined as the act of purchasing a large percentage of the available goods offered for sale at the Electronic commerce with the intention to manipulate the availability of the Products and/or to sell it at a profit by inappropriately inflating the price. This implies that traders are prohibited from acquiring a significant portion of goods available in the market in order to artificially inflate the price or create an artificial shortage of a Products, which would enable them to sell their Products at an expensive price.

In the context of ecommerce, any attempt to corner a Products in connection with transactions in the Electronic commerce could lead to discretionary suspension of the trader's (member's) trading rights by the Exchange. Additionally, cornering a Products or attempting to corner the market in order to gain sufficient control of a particular Products traded at the Exchange, with the intention to manipulate its price, would be considered a category three rule violation. These rules demonstrate that the Electronic commerce has provisions against acts of cornering because such practices could potentially lead to price inflation and have adverse effects on the overall market.

Interestingly, the Trade Competition and Consumer Protection Proclamation includes a concept similar to cornering, referred to as hoarding, under its provisions. According to Article 24(1) of the proclamation, hoarding is defined as the act of concealing or storing goods declared as scarce in the market by a public notice issued by the Ministry of Trade. This act is considered contrary to regular commercial practice for business persons or beyond personal/family consumption for individuals who are not business persons.

However, it is essential to note that Article 24(1) falls under the proclamation's section dedicated to the distribution of goods and services. As a result, it may be challenging to interpret this article as a specific rule against anticompetitive trading practices. Furthermore, the section of the proclamation that addresses anticompetitive trade practices does not explicitly mention the term "hoarding," except in Article 5(2)(a) regarding the abuse of market dominance.

Hence, we can't argue that the current Trade Competition and Consumer Protection Proclamation provides a precise rule to address the Products Exchange's Anticompetitive Unilateral Act, Cornering.

ii. Dumping

Dumping is defined as the act of selling a large quantity of goods at a price below their fair value. The Agreement on the Implementation of the 1994 General Agreement on Tariffs and Trade provides a comprehensive definition, stating that dumping occurs when a product is introduced into another country at a price lower than its price or comparable price in the exporting country. The cost of production is used as a basis to analyze whether dumping has taken place.

In the context of Ethiopian Trade Competition and Consumer Protection Proclamation, Article 5(2)(b) explicitly prohibits selling a Products below its production cost. However, it is important to note that this particular rule applies only to cases of Abuse of Market Dominance and may not cover all scenarios of dumping. As a result, the current provisions of the Proclamation may not fully address the issue of dumping as an Anticompetitive Unilateral Act in all contexts.

In Incident No. 0002/184,[191] which was reviewed for this study, a seller member engaged in selling 1.482 lots of unwashed contraband coffee owned by Limmu Cosa Woreda Coffee & Tea Development & Marketing Authority Office on September 09, 2017. The seller sold the Products at a significantly lower price (1085 birr) compared to the better market price (an average of 1142 birr) for the same Products in the same trading session. This act resulted in an economic loss for the seller's client and created a lower price range if this price (1182 birr) was considered the closing price for the Products. The incident suggests that the seller may have sold the Products at a much cheaper price, possibly because it was government-owned, and the seller's interests were not at stake.

Although the specific term "dumping" is not explicitly mentioned in the Competition rules, the regulations do contain provisions that can indirectly address such practices through general rules against price manipulation. In particular, Article 14.6.2 of the rules prohibits engaging in transactions that artificially influence Products prices. Dumping acts that result in price suppression could fall under the purview of this article, making the offender subject to punishment, which may include warnings, fines, or mandatory training on trading rules. Therefore, while not specifically targeting dumping, the rules offer a mechanism to address such activities within the broader context of price manipulation in e-commerce trading.

g. Rules against Matching Orders

The study could not find any specific prohibition under the country's competition laws regarding traders (members) acting as both buyers and sellers on the E-commerce platform. Amanuel Chala's statements suggest that such dual roles may be contrary to competitive trading practices.

However, official confirmation received via email indicates that the Products Electronic commerce does prohibit traders from holding both buyer and seller memberships on the Electronics

[191] Ethiopia Commodity Exchange, Market Surveillance Division. (2017). Dumping a Commodity: E-trade (Incident No. 0002). pp. 1-3.

Commerce platform. Despite this official prohibition, there is still a legal loophole that allows traders to assume both roles in the trading of by-product coffee, which is acknowledged as a narrowly opened window for potential anticompetitive acts.

In summary, while specific trading rules exist within the Ethiopian competition law, there is a lack of regulations that specifically address Anticompetitive Unilateral Acts in other areas. The existing rules, while generally applicable to Electronic Trading, do not contain specific provisions to effectively tackle such acts in this context.

Considering the provisions of the Ethiopian Trade Competition and Consumer Protection Proclamation, especially the rules on unfair competition discussed in the second chapter, it becomes evident that the competition regime may not be fully equipped to effectively address the Anticompetitive Unilateral Acts observed in the Electronic Trading. However, it is worth noting that the Electronic commerce has implemented its own set of rules that can be utilized to prohibit and prevent Anticompetitive Unilateral Acts, thereby fostering a more competitive market environment.

Chapter Four

Conclusion and Recommendations

4.1. Conclusion

Based on the comprehensive study conducted, several key findings have been identified and can be summarized as follows:

A. The study findings indicate the presence of various Anticompetitive Unilateral Acts within the realm of Electronic commerce, including (1) Flash Crashing, (2) Unrepresentative Pricing, (3) Failure/refusal to submit pre-open session order, (4) Pace Making, (5) Marking the closing price, (6) Cornering and Dumping, and (7) Matching Orders. Among these acts, traders acknowledged that Flash Crashing, Pace Making, Unrepresentative Pricing, and Failure/refusal to submit pre-open session order were the most frequently observed anticompetitive behaviors in the Electronic commerce sector. Conversely, Cornering, Dumping, and Matching Orders were reported as the least observed anticompetitive acts in the country's Electronic commerce industry.

B. The literature categorizes anticompetitive acts into four main groups: Anticompetitive Agreements, Abuse of Dominance, Anticompetitive Mergers, and Anticompetitive Unilateral Acts. While the Ethiopian competition regime includes regulations to address abuse of dominance, anticompetitive agreements, anticompetitive mergers, and unfair competition, it may not be evident which specific section of the regime covers Anticompetitive Unilateral Acts. Although the rules on unfair competition appear to be the most relevant, their primary focus is to prevent competitors from misleading consumers by misrepresenting goods or services as their own. The findings of this study indicate that the unfair competition rules within the Ethiopian competition regime primarily focus on safeguarding intellectual property rights, protecting the goodwill of competitors, and shielding consumers from deceptive practices. It seems that the unfair competition rules are intended to protect private rights, which are already covered by other legislations such as the Commercial Code, the 1960 Civil Code, the 1995 Criminal Code, and the 2013 Advertisement Proclamation. These laws offer comparable protections to those provided by the unfair competition rules within the competition regime.

C. Anticompetitive Unilateral Acts in E-commerce involve a broad spectrum of aspects, including technical price manipulation, non-disclosure of market information (concealing pre-trade information), the authenticity of submitted orders, and manipulation of the system or future transactions. These acts contribute to distorting market dynamics and hindering fair competition in electronic trading environments. Furthermore, these acts may have a repercussion effect on reliability of the ecommerce price discovery, competitive trading practice and genuine price dissemination to its parties in the trading system. To the contrary, unfair competition rules incline to protecting good will of traders and consumer's right by prohibiting acts of passing off goods/service of others' as one 's own good/service. The electronic commerce faced a problem which requires entrenching a competition culture and rules which promotes competitive trade by discouraging Anticompetitive Unilateral Acts. However, the competition regime offers unfair competition rules which aim at protecting private interests of competitors and consumers by simply prohibiting acts of passing off goods and services. There is a noticeable mismatch between the problem of the E-commerce traders and solution offered by the competition regime. Therefore, one may strongly argue that the current competition regime does not offer proper tools to tackle unique Anticompetitive Unilateral Acts which eliminate competition from Electronic commerce System.

D. In summary, after an in-depth evaluation of the findings outlined above, it becomes clear that the current Ethiopian competition law may not provide the best mechanism to effectively manage Anticompetitive Unilateral Acts within the scope of electronic trading in Ethiopia. Therefore, a legal amendment is needed to adequately govern these actions

4.2. Recommendations

The comprehensive study, particularly the findings, highlights the necessity for a careful reassessment of the following matters or aspects of interest:

1. The Ethiopian competition laws do not adequately address the specific challenges posed by unilateral anticompetitive behaviors in the e-commerce sector. The rising concerns in the e-commerce domain, including (i) Flash Crashing, (ii) Unrepresentative Pricing, (iii) Failure/refusal to submit pre-open session orders, (iv) Pace Making, (v) Marking the closing price, (vi) Cornering and Dumping, and (vii) Matching Orders, showcase the disruptive impact and non-price anticompetitive behaviors commonly found in e-commerce marketplaces. It is crucial for the relevant competition laws in Ethiopia, including existing and proposed regulations, to be designed with a primary focus on addressing not only intentional and price-based anticompetitive practices but also the unilateral anticompetitive issues commonly observed in e-commerce environments.
2. The effectiveness of the unfair competition rules in tackling Anticompetitive Unilateral Acts within the country should be reevaluated by the competition regime. Based on the study's findings, there is a specific recommendation to consider potential amendments to Article 8 of the Trade Competition and Consumer Protection Proclamation while keeping the current rule unchanged.

   (Revision)

   Art 8: Anticompetitive unilateral Practices

   a. No trader shall be involved in any act, directly or indirectly, in the course of business, that hinders or eradicates competition.
   b. The following acts shall be considered as Anticompetitive Unilateral Acts (keeping the current sub-article 2 (a-g) listings intact while introducing an additional phrase): "Any of the aforementioned acts or attempts that violate the intellectual property rights of another trader, as determined by the appropriate authority through due legal process, and where such violation leads to the reduction or elimination of competitive trading practices, shall be regarded as an Anticompetitive Unilateral Act."
3. The acts listed below shall also be considered as Anticompetitive Unilateral Acts;

a. Engaging in deceptive practices by submitting false transaction orders or executing transactions with fictitious information to manipulate prices or create artificial liquidity.
b. Submitting false transaction orders or executing transactions with fictitious information to manipulate prices or create artificial liquidity.
c. Withholding market information to create information asymmetry and mislead market participants.
d. Spreading false market information or rumors to deceive decision-making and destabilize markets, leading to a reduction in market competitiveness.
e. Engaging in trades that match purchase and sale orders by a single individual/undertaking to eliminate or weaken competitive trading practices, unless otherwise permitted by law.
f. Submitting orders or executing trades with highly exaggerated and unrepresentative prices to disrupt rational economic decision-making or cause market fluctuations that impact competitiveness.
g. Executing trades based on insider information not available to all traders or the public, resulting in the elimination or reduction of market competitiveness.
h. Attempting to corner goods or services without economic grounds or with the intent to create unjustified demand, surpassing legally allowed warehousing periods.
i. Dumping goods or services without valid economic rationale or in a manner that undermines the competitiveness of other market participants.

4. Strong enforcement of competition laws: The regulatory body responsible for enforcing the unfair trade practice rules should increase its monitoring activities on e-commerce businesses and enforce the law when necessary. This would require the allocation of sufficient resources to ensure effective monitoring and enforcement.

5. Improved market surveillance: Effective market surveillance is crucial for detecting and preventing unilateral anticompetitive acts. This can be achieved through improved data collection, analysis, and reporting.

6. Awareness and education: To effectively enforce the unfair trade practice rules of Ethiopia's competition law on e-commerce, it is important to raise awareness among e-commerce businesses and consumers about the existence and implications of these rules. This can be achieved through education campaigns, workshops, and training programs.

7. Collaboration among stakeholders: Collaboration and coordination among various stakeholders, including regulatory bodies, e-commerce businesses, and consumers, is crucial in enforcing the unfair trade practice rules of Ethiopia's competition law. This could involve the establishment of a forum or platform where stakeholders can share information and collaborate on issues related to e-commerce and competition law.

8. Further research is necessary to investigate Unilateral Anticompetitive Acts in Ethiopian E-commerce and their legal consequences across various government authorities. These studies should examine the effects of anticompetitive behavior by major e-commerce companies and buyers on growth, employment, and consumer welfare. Such research would enhance the capabilities of competition authorities and policymakers in addressing these issues effectively.

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Appendix

ለአሸዋ ቴክኖሎጂ

ቀን፡ መጋቢት 16 ቀን 2015

ቦታ፡ አዲስ አበባ

ይህ ቃለ-መጠይቅ የተዘጋጀው የአዲስ አበባ ዩኒቨርስቲ የህግ ትምህርት ክፍል የሁለተኛ ድግሪ የንግድ ስራ ህግ (Business Law) ተማሪ የሆነው አቶ ገበየሁ ማስሬ ለዚህ ትምህርት ማሟያ እንዲሆን ለጀመረው **Enforcing the Unfair Trade Practice Rules of Ethiopia's Competition Law on E-commerce: The practice and the Challenge** ጥናት ግብዓት እንዲሆን ነው።

ለሚያደርጉልን ትብብር ከወዲሁ አመሰግናለሁ።

<u>ጥያቄዎች</u>

በአሸዋ ቴክኖሎጂ የኤሌክትሮኒክ ግብይት ከዚህ በታች ከተዘረዘሩት ለውድድር ተቃራኒ የሆኑ ተግባሮች ገጥሞዎት ያውቃሉ/አለ ብለው ያምናሉ?

1. ዋጋን /የምርት መጠንን በድንገት መጨመር/ በመቀነስ/ ሽያጭ/ግዥ መፈፀም/ለመፈፀም መሞከር (Flash Crushing)
2. ለምርት ወካይ ያልሆነ (የማይገባ) የተጋነነ ከፍተኛ/ በጣም ዝቅተኛ ዋጋ ሆን ብሎ ወይንም በቸልተኝነት መክፈል (Unrepresentative Pricing)
3. በቅድመ መክፈቻ የግብይት ክፍለ ጊዜ (Pre-Open Session) የግዥ/ የሽያጭ ትእዛዝ ሆን ብሎ/በቸልተኝነት አለማስገባት
4. ምንም አይነት የመግዛት/የመሸጥ ፍላጎት ሳይኖራቸው የምርት ዋጋን ለማዋደድ/ለማራከስ አሯሯጭ መሆን (Marking the Closing Price)
5. ሰው ሰራሽ የምርት ተፈላጊነት/መርከስን ለመፍጠር ሆነ ምርት ወደ ገበያ ከማስገባት ለተወሰነ ጊዜ መታቀብ ወይንም የምርት ዋጋ ያለአግባቡ እንዲራከስ ከፍትኛ መጠን ያለውን ምርት ምርቱ ሊያገኝ ከሚገባው/ከሚችለው ዋጋ በታች በመተመን ለገበያ ማቅረብ (Cornering and Dumping)
6. አንዳንድ አገናኝ አባሎች የሁለት ደንበኞችን /የገዥ እና የሻጭ ደንበኞች/ የመግዛት እና የመሸጥ ትእዛዝ በአንድ ጊዜ በማዛመድ ግብይት በመፈፀም የምርት ዋጋን መወሰን (Matching Order)

ከላይ ከተዘረዘሩት ተግባራት በተጨማሪ ግለሰቦች በእራሳቸው /ከሌሎች ነጋዴዎችጋር ስምምነት ሳይፈጥሩ/ የሚፈፅሟቸው ውድድርን የሚገቱ/የሚያስቀሩ /ፍትሃዊ ያልሆነ የውድድር ተግባር/ ካሉ ከዚህ በታች ቢጠቅሱልን።

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ለፐርፖዝ ብላክ ኢትዮጵያ

ቀን፡ መጋቢት 16 ቀን 2015

ቦታ፡ አዲስ አበባ

ይህ ቃለ-መጠይቅ የተዘጋጀው የአዲስ አበባ ዩኒቨርስቲ የህግ ትምህርት ክፍል የሁለተኛ ድግሪ የንግድ ስራ ህግ (Business Law) ተማሪ የሆነው አቶ ገበየሁ ማስሬ ለዚህ ትምህርት ማሟያ እንዲሆን ለጀመረው **Enforcing the Unfair Trade Practice Rules of Ethiopia's Competition Law on E-commerce: The practice and the Challenge** ጥናት ግብዓት እንዲሆን ነው።

ለሚያደርጉልን ትብብር ከወዲሁ አመሰግናለሁ።

ጥያቄዎች

በፐርፖዝ ብላክ ኢትዮጵያ የኤሌክትሮኒክ ግብይት ከዚህ በታች ከተዘረዘሩት ለውድድር ተቃራኒ የሆኑ ተግባሮች ገጥሞዎት ያውቃሉ/አለ ብለው ያምናሉ?

1. ዋጋን /የምርት መጠንን በድንገት መጨመር/ በመቀነስ/ ሽያጭ/ግዥ መፈፀም/ለመፈፀም መሞከር (Flash Crushing)
2. ለምርት ወካይ ያልሆነ (የማይገባ) የተጋነነ ከፍተኛ/ በጣም ዝቅተኛ ዋጋ ሆን ብሎ ወይንም በቸልተኝነት መክፈል (Unrepresentative Pricing)
3. በቅድመ መክፈቻ የግብይት ክፍለ ጊዜ (Pre-Open Session) የግዥ/ የሽያጭ ትእዛዝ ሆን ብሎ/በቸልተኝነት አለማስገባት
4. ምንም አይነት የመግዛት/የመሸጥ ፍላጎት ሳይኖራቸው የምርት ዋጋን ለማዋደድ/ለማራከስ አሯሯጭ መሆን (Marking the Closing Price)
5. ሰው ሰራሽ የምርት ተፈላጊነት/መርከስን ለመፍጠር ሆነ ምርት ወደ ገበያ ከማስገባት ለተወሰነ ጊዜ መታቀብ ወይንም የምርት ዋጋ ያለአግባቡ እንዲራከስ ከፍትኛ መጠን ያለውን ምርት ምርቱ ሊያገኝ ከሚገባው/ከሚችለው ዋጋ በታች በመተመን ለገበያ ማቅረብ (Cornering and Dumping)
6. አንዳንድ አገናኝ አባሎች የሁለት ደንበኞችን /የገዥ እና የሻጭ ደንበኞች/ የመግዛት እና የመሸጥ ትእዛዝ በአንድ ጊዜ በማዛመድ ግብይት በመፈፀም የምርት ዋጋን መወሰን (Matching Order)

ከላይ ከተዘረዘሩት ተግባራት በተጨማሪ ግለሰቦች በእራሳቸው /ከሌሎች ነጋዴዎችጋር ስምምነት ሳይፈጥሩ/ የሚፈፅሟቸው ውድድርን የሚገቱ/የሚያስቀሩ /ፍትሃዊ ያልሆነ የውድድር ተግባር/ ካሉ ከዚህ በታች ቢጠቅሱልን።

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ለሀሎ ማርኬት

ቀን፡ መጋቢት 16 ቀን 2015

ቦታ፡ አዲስ አበባ

ይህ ቃለ-መጠይቅ የተዘጋጀው የአዲስ አበባ ዩኒቨርስቲ የህግ ትምህርት ክፍል የሁለተኛ ድግሪ የንግድ ስራ ህግ (Business Law) ተማሪ የሆነው አቶ ገበየሁ ማስሬ ለዚህ ትምህርት ማሟያ እንዲሆን ለጀመረው **Enforcing the Unfair Trade Practice Rules of Ethiopia's Competition Law on E-commerce: The practice and the Challenge** ጥናት ግብዓት እንዲሆን ነው።

ለሚያደርጉልን ትብብር ከወዲሁ አመሰግናለሁ።

<u>ጥያቄዎች</u>

በሀሎ ማርኬት የኤሌክትሮኒክ ግብይት ከዚህ በታች ከተዘረዘሩት ለውድድር ተቃራኒ የሆኑ ተግባሮች ገጥሞዎት ያውቃሉ/አለ ብለው ያምናሉ?

1. ዋጋን /የምርት መጠንን በድንገት መጨመር/ በመቀነስ/ ሽያጭ/ግዥ መፈፀም/ለመፈፀም መሞከር (Flash Crushing)
2. ለምርት ወካይ ያልሆነ (የማይገባ) የተጋነነ ከፍተኛ/ በጣም ዝቅተኛ ዋጋ ሆን ብሎ ወይንም በቸልተኝነት መክፈል (Unrepresentative Pricing)
3. በቅድመ መክፈቻ የግብይት ክፍለ ጊዜ (Pre-Open Session) የግዥ/ የሽያጭ ትእዛዝ ሆን ብሎ/በቸልተኝነት አለማስገባት
4. ምንም አይነት የመግዛት/የመሸጥ ፍላጎት ሳይኖራቸው የምርት ዋጋን ለማዋደድ/ለማራከስ አሯሯጭ መሆን (Marking the Closing Price)
5. ሰው ሰራሽ የምርት ተፈላጊነት/መርከስን ለመፍጠር ሆነ ምርት ወደ ገበያ ከማስገባት ለተወሰነ ጊዜ መታቀብ ወይንም የምርት ዋጋ ያለአግባቡ እንዲራከስ ከፍትኛ መጠን ያለውን ምርት ምርቱ ሊያገኝ ከሚገባው/ከሚችለው ዋጋ በታች በመተመን ለገበያ ማቅረብ (Cornering and Dumping)
6. አንዳንድ አገናኝ አባሎች የሁለት ደንበኞችን /የገዥ እና የሻጭ ደንበኞች/ የመግዛት እና የመሸጥ ትእዛዝ በአንድ ጊዜ በማዛመድ ግብይት በመፈፀም የምርት ዋጋን መወሰን (Matching Order)

ከላይ ከተዘረዘሩት ተግባራት በተጨማሪ ግለሰቦች በእራሳቸው /ከሌሎች ነጋዴዎችጋር ስምምነት ሳይፈጥሩ/ የሚፈፅሟቸው ውድድርን የሚገቱ/የሚያስቀሩ /ፍትሃዊ ያልሆነ የውድድር ተግባር/ ካሉ ከዚህ በታች ቢጠቅሱልን።

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ለአዲስ መርካቶ

ቀን፡ መጋቢት 16 ቀን 2015

በታ፡ አዲስ አበባ

ይህ ቃለ-መጠይቅ የተዘጋጀው የአዲስ አበባ ዩኒቨርስቲ የህግ ትምህርት ክፍል የሁለተኛ ድግሪ የንግድ ስራ ህግ (Business Law) ተማሪ የሆነው አቶ ገበየሁ ማስሬ ለዚህ ትምህርት ማሟያ እንዲሆን ለጀመረው **Enforcing the Unfair Trade Practice Rules of Ethiopia's Competition Law on E-commerce: The practice and the Challenge** ጥናት ግብዓት እንዲሆን ነው፡፡

ለሚያደርጉልን ትብብር ከወዲሁ አመሰግናለሁ፡፡

ጥያቄዎች

በአዲስ መርካቶ የኤሌክትሮኒክ ግብይት ከዚህ በታች ከተዘረዘሩት ለውድድር ተቃራኒ የሆኑ ተግባሮች ገጥሞዎት ያውቃሉ/አለ ብለው ያምናሉ?

1. ዋጋን /የምርት መጠንን በድንገት መጨመር/ በመቀነስ/ ሽያጭ/ግዥ መፈፀም/ለመፈፀም መሞከር (Flash Crushing)
2. ለምርት ወካይ ያልሆነ (የማይገበ) የተጋነነ ከፍተኛ/ በጣም ዝቅተኛ ዋጋ ሆን ብሎ ወይንም በቸልተኝነት መክፈል (Unrepresentative Pricing)
3. በቅድመ መክፈቻ የግብይት ክፍለ ጊዜ (Pre-Open Session) የግዥ/ የሽያጭ ትእዛዝ ሆን ብሎ/በቸልተኝነት አለማስገባት
4. ምንም አይነት የመግዛት/የመሸጥ ፍላጎት ሳይኖራቸው የምርት ዋጋን ለማዋደድ/ለማራከስ አሯሯጭ መሆን (Marking the Closing Price)
5. ሰው ሰራሽ የምርት ተፈላጊነት/መርከስን ለመፍጠር ሆነ ምርት ወደ ገበያ ከማስገባት ለተወሰነ ጊዜ መታቀብ ወይንም የምርት ዋጋ ያለአግባቡ እንዲራከስ ከፍትኛ መጠን ያለውን ምርት ምርቱ ሊያገኝ ከሚገባው/ከሚችለው ዋጋ በታች በመተመን ለገበያ ማቅረብ (Cornering and Dumping)
6. አንዳንድ አገናኝ አባሎች የሁለት ደንበኞችን /የገዥ እና የሻጭ ደንበኞች/ የመግዛት እና የመሸጥ ትእዛዝ በአንድ ጊዜ በማዛመድ ግብይት በመፈፀም የምርት ዋጋን መወሰን (Matching Order)

ከላይ ከተዘረዘሩት ተግባራት በተጨማሪ ግለሰቦች በእራሳቸው /ከሌሎች ነጋዴዎችጋር ስምምነት ሳይፈጥሩ/ የሚፈፅሟቸው ውድድርን የሚገቱ/የሚያስቀሩ /ፍትሃዊ ያልሆነ የውድድር ተግባር/ ካሉ ከዚህ በታች ቢጠቅሱልን፡፡

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ለዲኤች ኤል አፍሪካ ሾፕ

ቀን፡ መጋቢት 16 ቀን 2015

ቦታ፡ አዲስ አበባ

ይህ ቃለ-መጠይቅ የተዘጋጀው የአዲስ አበባ ዩኒቨርስቲ የህግ ትምህርት ክፍል የሁለተኛ ድግሪ የንግድ ስራ ህግ (Business Law) ተማሪ የሆነው አቶ ገበየሁ ማስሬ ለዚህ ትምህርት ማሟያ እንዲሆን ለጀመረው **Enforcing the Unfair Trade Practice Rules of Ethiopia's Competition Law on E-commerce: The practice and the Challenge** ጥናት ግብዓት እንዲሆን ነው።

ለሚያደርጉልን ትብብር ከወዲሁ አመሰግናለሁ።

<u>ጥያቄዎች</u>

በዲኤች ኤል አፍሪካ ሾፕ የኤሌክትሮኒክ ግብይት ከዚህ በታች ከተዘረዘሩት ለውድድር ተቃራኒ የሆኑ ተግባሮች ገጥሞዎት ያውቃሉ/አለ ብለው ያምናሉ?

1. ዋጋን /የምርት መጠንን በድንገት መጨመር/ በመቀነስ/ ሽያጭ/ግዥ መፈፀም/ለመፈፀም መሞከር (Flash Crushing)
2. ለምርት ወካይ ያልሆነ (የማይገባ) የተጋነነ ከፍተኛ/ በጣም ዝቅተኛ ዋጋ ሆን ብሎ ወይንም በቸልተኝነት መክፈል (Unrepresentative Pricing)
3. በቅድመ መክፈቻ የግብይት ክፍለ ጊዜ (Pre-Open Session) የግዥ/ የሽያጭ ትእዛዝ ሆን ብሎ/በቸልተኝነት አለማስገባት
4. ምንም አይነት የመግዛት/የመሸጥ ፍላጎት ሳይኖራቸው የምርት ዋጋን ለማዋደድ/ለማራከስ አሯሯጭ መሆን (Marking the Closing Price)
5. ሰው ሰራሽ የምርት ተፈላጊነት/መርከስን ለመፍጠር ሆነ ምርት ወደ ገበያ ከማስገባት ለተወሰነ ጊዜ መታቀብ ወይንም የምርት ዋጋ ያለአግባቡ እንዲራከስ ከፍትኛ መጠን ያለውን ምርት ምርቱ ሊያገኝ ከሚገባው/ከሚችለው ዋጋ በታች በመተመን ለገበያ ማቅረብ (Cornering and Dumping)
6. አንዳንድ አገናኝ አባሎች የሁለት ደንበኞችን /የገዥ እና የሻጭ ደንበኞች/ የመግዛት እና የመሸጥ ትእዛዝ በአንድ ጊዜ በማዛመድ ግብይት በመፈፀም የምርት ዋጋን መወሰን (Matching Order)

ከላይ ከተዘረዘሩት ተግባራት በተጨማሪ ግለሰቦች በእራሳቸው /ከሌሎች ነጋዴዎችጋር ስምምነት ሳይፈጥሩ/ የሚፈፅሟቸው ውድድርን የሚገቱ/የሚያስቀሩ /ፍትሃዊ ያልሆነ የውድድር ተግባር/ ካሉ ከዚህ በታች ቢጠቅሱልን።

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ለመርካቶ ኦንላይን

ቀን፡ መጋቢት 16 ቀን 2015

ቦታ፡ አዲስ አበባ

ይህ ቃለ-መጠይቅ የተዘጋጀው የአዲስ አበባ ዩኒቨርስቲ የህግ ትምህርት ክፍል የሁለተኛ ድግሪ የንግድ ስራ ህግ (Business Law) ተማሪ የሆነው አቶ ገበየሁ ማስሬ ለዚህ ትምህርት ማሟያ እንዲሆን ለጀመረው **Enforcing the Unfair Trade Practice Rules of Ethiopia's Competition Law on E-commerce: The practice and the Challenge** ጥናት ግብዓት እንዲሆን ነው።

ለሚያደርጉልን ትብብር ከወዲሁ አመሰግናለሁ።

ጥያቄዎች

በመርካቶ ኦንላይን የኤሌክትሮኒክ ግብይት ከዚህ በታች ከተዘረዘሩት ለውድድር ተቃራኒ የሆኑ ተግባሮች ገጥሞዎት ያውቃሉ/አለ ብለው ያምናሉ?

1. ዋጋን /የምርት መጠንን በድንገት መጨመር/ በመቀነስ/ ሽያጭ/ግዥ መፈፀም/ለመፈፀም መሞከር (Flash Crushing)
2. ለምርት ወካይ ያልሆነ (የማይገባ) የተጋነነ ከፍተኛ/ በጣም ዝቅተኛ ዋጋ ሆን ብሎ ወይንም በቸልተኝነት መክፈል (Unrepresentative Pricing)
3. በቅድመ መክፈቻ የግብይት ክፍለ ጊዜ (Pre-Open Session) የግዥ/ የሽያጭ ትእዛዝ ሆን ብሎ/በቸልተኝነት አለማስገባት
4. ምንም አይነት የመግዛት/የመሸጥ ፍላጎት ሳይኖራቸው የምርት ዋጋን ለማዋደድ/ለማራከስ አሯሯጭ መሆን (Marking the Closing Price)
5. ሰው ሰራሽ የምርት ተፈላጊነት/መርከስን ለመፍጠር ሆነ ምርት ወደ ገበያ ከማስገባት ለተወሰነ ጊዜ መታቀብ ወይንም የምርት ዋጋ ያለአግባቡ እንዲራከስ ከፍትኛ መጠን ያለውን ምርት ምርቱ ሊያገኝ ከሚገባው/ከሚችለው ዋጋ በታች በመተመን ለገበያ ማቅረብ (Cornering and Dumping)
6. አንዳንድ አገናኝ አባሎች የሁለት ደንበኞችን /የገዥ እና የሻጭ ደንበኞች/ የመግዛት እና የመሸጥ ትእዛዝ በአንድ ጊዜ በማዛመድ ግብይት በመፈፀም የምርት ዋጋን መወሰን (Matching Order)

ከላይ ከተዘረዘሩት ተግባራት በተጨማሪ ግለሰቦች በእራሳቸው /ከሌሎች ነጋዴዎችጋር ስምምነት ሳይፈጥሩ/ የሚፈፅሟቸው ውድድርን የሚገቱ/የሚያስቀሩ /ፍትሃዊ ያልሆነ የውድድር ተግባር/ ካሉ ከዚህ በታች ቢጠቅሱልን።

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ለቦስቴክስ

ቀን፡ መጋቢት 16 ቀን 2015

ቦታ፡ አዲስ አበባ

ይህ ቃለ-መጠይቅ የተዘጋጀው የአዲስ አበባ ዩኒቨርስቲ የህግ ትምህርት ክፍል የሁለተኛ ድግሪ የንግድ ስራ ህግ (Business Law) ተማሪ የሆነው አቶ ገበየሁ ማስሬ ለዚህ ትምህርት ማሟያ እንዲሆን ለጀመረው **Enforcing the Unfair Trade Practice Rules of Ethiopia's Competition Law on E-commerce: The practice and the Challenge** ጥናት ግብዓት እንዲሆን ነው።

ለሚያደርጉልን ትብብር ከወዲሁ አመሰግናለሁ።

ጥያቄዎች

በመርካቶ ኦንላይን የኤሌክትሮኒክ ግብይት ከዚህ በታች ከተዘረዘሩት ለውድድር ተቃራኒ የሆኑ ተግባሮች ገጥሞዎት ያውቃሉ/አለ ብለው ያምናሉ?

1. ዋጋን /የምርት መጠንን በድንገት መጨመር/ በመቀነስ/ ሽያጭ/ግዥ መፈፀም/ለመፈፀም መሞከር (Flash Crushing)
2. ለምርት ወካይ ያልሆነ (የማይገባ) የተጋነነ ከፍተኛ/ በጣም ዝቅተኛ ዋጋ ሆን ብሎ ወይንም በቸልተኝነት መክፈል (Unrepresentative Pricing)
3. በቅድመ መክፈቻ የግብይት ክፍለ ጊዜ (Pre-Open Session) የግዥ/ የሽያጭ ትእዛዝ ሆን ብሎ/በቸልተኝነት አለማስገባት
4. ምንም አይነት የመግዛት/የመሸጥ ፍላጎት ሳይኖራቸው የምርት ዋጋን ለማዋደድ/ለማራከስ አሯሯጭ መሆን (Marking the Closing Price)
5. ሰው ሰራሽ የምርት ተፈላጊነት/መርከስን ለመፍጠር ሆነ ምርት ወደ ገበያ ከማስገባት ለተወሰነ ጊዜ መታቀብ ወይንም የምርት ዋጋ ያለአግባቡ እንዲራከስ ከፍትኛ መጠን ያለውን ምርት ምርቱ ሊያገኝ ከሚገባው/ከሚችለው ዋጋ በታች በመተመን ለገበያ ማቅረብ (Cornering and Dumping)
6. አንዳንድ አገናኝ አባሎች የሁለት ደንበኞችን /የገዥ እና የሻጭ ደንበኞች/ የመግዛት እና የመሸጥ ትእዛዝ በአንድ ጊዜ በማዛመድ ግብይት በመፈፀም የምርት ዋጋን መወሰን (Matching Order)

ከላይ ከተዘረዘሩት ተግባራት በተጨማሪ ግለሰቦች በእራሳቸው /ከሌሎች ነጋዴዎችጋር ስምምነት ሳይፈጥሩ/ የሚፈፅሟቸው ውድድርን የሚገቱ/የሚያስቀሩ /ፍትሃዊ ያልሆነ የውድድር ተግባር/ ካሉ ከዚህ በታች ቢጠቅሱልን።

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