



**ADDIS ABABA UNIVERSITY**

**SCHOOL OF GRADUATE STUDIES**

**COLLEGE OF LAW AND GOVERNANCE**

**SCHOOL OF LAW**

**ASSESSING THE ENFORCMENT OF THE ABUSE OF MARKET DOMINANCE  
PROVISIONS OF ETHIOPIA'S COMPETITION LAW IN THE CEMENT MARKET**

**By: Hanan Mohammed Habib**

**July, 2023**

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A Thesis Submitted to the School of Graduate Studies of Addis Ababa University in Partial Fulfilment of the Requirements of the award of Masters of law (LL.M) degree in Business Law.

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**Addis Ababa, Ethiopia**

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**DECLARATION**

I, the undersigned, hereby declare that this is my original work, has not been presented for a degree in any other university or institution and that all sources of materials used for the thesis have been duly acknowledged.

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## **ACRONYMS**

AAU	Addis Ababa University
ART	Article
ECJ	European Court of Justice
FDRE	Federal Democratic Republic of Ethiopia
EU	European Union
GC	Gregorian calendar
IDS	Industrial Development Strategy
MoTRI	Ministry of Trade and Regional Integration
MSE	Micro and Small Enterprises
OECD	Organization for Economic Co-operation and Development
TCCPA	Trade Competition and Consumer Protection Authority
TCCPP	Trade Competition and Consumer Protection Proclamation
TFEU	Treaty on the Functioning of the European Union
UN	United Nation
UNCTAD	United Nations Conference on Trade and Development
US	United States

## **Abstract**

Abuse of market dominance is one of the major sources of many problems in the dynamic market in most countries. Many countries, including Ethiopia, prohibit the abuse of market dominance as part of their legal framework. The cement market in Ethiopia is characterized by high and substantially increasing prices, which affected the economy, social, and political arenas in the country. The study is bounded by an assessment of the enforcement framework of the market dominance provisions of Ethiopian TCCPP 813/2013 in the cement market. The overarching objective of this study is to assess the abuse of market dominance provisions of Ethiopian competition law in the cement market for the purpose of maintaining fair trade competition. The study answers whether the Ethiopian TCCPP abuses of market dominance provisions are effectively enforced in the cement market or not. It also addresses the legal gaps in the abuse of market dominance provisions and the practical and institutional challenges in the enforcement of abuse of market dominance in the cement market. The main actors in maintaining fair trade competition and protecting consumer rights in the cement market are the MoTRI, legislative bodies, the FDRE government, and academicians, who are recommended to take action to mitigate the prevalent problems.

## **Chapter One**

### **Introduction**

#### **1.1 Background of the Study**

It is vital to understand that in the economic system, competition has a role to play. Based on the state's role in the economy, there are various economic systems, such as planned or command, free-market, and mixed.<sup>1</sup>

Maintaining and promoting competition as a means of guaranteeing the effective distribution of resources in a country's economy is the major goal of competition policy and law. It is expected that this will lead to reduced prices, sufficient supply for consumers, quicker growth, and a more equitable distribution of income.<sup>2</sup>

Competition can benefit consumers in other ways as well: it may lead to greater product variety, higher product quality, and greater innovation, which drives productivity growth and helps raise living standards.<sup>3</sup>

Competition policy also promotes good governance in the corporate sector as well as in government by lessening the opportunities for rent-seeking behavior and the corruption that often accompanies it.<sup>4</sup> Competition law and regulatory tools are invoked mainly to take care of firm behavior and market failures.<sup>5</sup>

Abuse of dominance is one of the three primary focuses of competition analysis, together with anti-competitive agreements and anti-competitive mergers.<sup>6</sup> The subject of dominance and its abuse in the area of competition policy and law is a very fascinating

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<sup>1</sup> Kenea Kiteta Abdi, The Legal And Institutional Framework Of The Ethiopian Competition Law And Its Enforcement, Addis Ababa University School Of Graduate Studies Faculty Of Law, June 2011  
Kenea%20Kiteta.pdf,

<sup>2</sup> Pradeep S. Mehta, Competition Policy In Developing Countries: An Asia-Pacific Perspective (2002)  
VII, <https://www.unescap.org/sites/default/files/Bulletin02-ch7.pdf>. 79

<sup>3</sup> Council Of Economic Advisers Issue Brief, Benefits Of Competition And Indicators Of Market Power, May 2016. 2

<sup>4</sup> Mehta, (n 2) 80

<sup>5</sup> Ibid

<sup>6</sup> Alex J. Kububa, Dominance And Abuse Of Dominance, Cuts International 7up3 Project, National Training Workshop On Competition Policy And Law 24<sup>th</sup> September 2007. 1

one in that it is generally accepted that the state of being in a dominant position in itself is not anticompetitive, but the abuse of that position, or the exercise of the market power that comes with dominance, is.<sup>7</sup>

The standard dominant firm model assumes that there is one big firm and a large number of small price-taking firms, typically referred to as the “competitive fringe, and because of its position, the dominant firm is modelled as selecting a price that the fringe firms take as a given in deciding how much to supply.<sup>8</sup> A firm is in a dominant position in a market when it is in a position to exercise a high degree of market control.<sup>9</sup> A person in a dominant position will be able to set prices or other market conditions without significant constraint from the consumer's or competitor's reaction.<sup>10</sup> A person in a dominant position will thus be able to initiate and maintain an appreciable increase in price or reduction in supply, degree, or quality of innovation without suffering an adverse impact on profitability in the short or long term.<sup>11</sup>

The cement industry is central to Ethiopian economic development, given the importance of infrastructure expansion, including many private and government mega projects. With growth in infrastructure development and investment in cement production, the Ethiopian cement industry grew so rapidly that the country was the third largest producer in sub-Saharan Africa in 2017.<sup>12</sup>

“The TCCPP (No. 813/2013), which is the current competition legislation in Ethiopia. The Proclamation is a much improved piece of competition legislation that overcomes most of the shortcomings of the previous proclamations on competition.”<sup>13</sup> This proclamation addresses many provisions regarding anti-competitive acts.

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<sup>7</sup> Ibid

<sup>8</sup> Ibid 2

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> Tesfaw Wondimu Tefera and Simon Roberts, The effect of competition on cement prices and the productivity of cement producers in Ethiopia, Fanele Jacana July 2019

<sup>13</sup> UNCTAD, a Review of Competition Policy in Ethiopia, [https://unctad.org/system/files/official-document/ditcclp2017d3\\_en.pdf](https://unctad.org/system/files/official-document/ditcclp2017d3_en.pdf)

The law is intended to encourage healthy competition. It prohibits anti-competitive agreements between firms, such as agreements to fix prices or to carve up markets, and it makes it illegal for businesses to abuse a dominant market position.<sup>14</sup>

## **1.2 Statement of the problem**

The cement factories in Ethiopia produce cement. But there is a shortage of cement in the proper channel market for the end users. The end users of cement are unable to get it through the proper channel. But the end users are getting the desired amount of cement improperly at the highest price. Moreover, this improper channel market does not allow the end user to choose the type or brand of product. Yet, the construction industry continues to grow, suffering from ever-increasing cement prices and complaining about the existence of improper channel markets. The dominant actors in the cement market have the actual capacity to control prices through commercial negotiations to increase the price of cement.

Ethiopian MoTRI issued different directives to regulate cement prices, curb the rising price of cement products in the country, and control unfair trade practices in the cement market. This clearly indicates that the cement market is not being led by the free market economic system, and these situations make the intervention of the government to regulate the cement market highly demanding.

Thus, this current situation in Ethiopia signals the prevalence of abuse of market dominance in the cement market. Therefore, it is the right time to examine the major challenges encountered in the enforcement of competition law in the country. There are many complaints in the market by customers because those dominant market actors in the cement industry discriminate against customers in prices and other conditions in the supply and purchase of cement. Investigating the possible means to reverse the improper channel and bring it to a regulated market mechanism is the main focus of the research.

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<sup>14</sup> Office of fair trading, a quick guide to competition and consumer protection laws that affect your business, 10/08

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284428/oft911.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/284428/oft911.pdf)

The abuse of market dominance in the cement market is creating economic, social, and political crises in the country. It is worsening the inflation rate in the general market. The abuse of market dominance is making the construction costs very high. As a result of the high construction costs, house and shop rents tend to be high, which in turn makes the cost of living in society increase. The high living costs in society will create an economic crisis. As part of the problem and a concerned citizen, I have to share my contribution in the process of solving such a huge national problem in the country.

Ethiopia ratified the TCCPP in 2013 to prevent the abuse of market dominance. The government has not yet prepared regulations and directives for the proper implementation of the proclamation. Yet, the abuse of market dominance, especially in the cement market, led to the worst situation. As a student of business law, it is my professional obligation to deal with the problems and come up with possible solutions to mitigate the prevalent problems.

### **1.3 Research Questions**

- ❖ Is there an abuse of market dominance in the cement market?
- ❖ Do the provisions of Ethiopia's Competition Law adequately protect against abuse of market dominance in the cement market?
- ❖ What are the practical challenges of enforcing the market dominance provisions of Ethiopia's Competition Law in the Cement Market?
- ❖ What are the structural and functional problems of law-enforcing institutions in maintaining a competitive market?

### **1.4 Objective of the Research**

#### **1.4.1 General objective**

The general objective of the study is to assess the abuse of market dominance provisions of Ethiopia's competition law in the cement market and to give possible recommendations.

#### **1.4.2 Specific objectives**

The specific objectives of the study are:

- ❖ To assess the existence of an abuse of market dominance in the cement market.
- ❖ To examine the legal loopholes of the abuse of market dominance provisions of Ethiopian competition law.

- ❖ To investigate practical challenges of enforcing abuse of market dominance provisions in the cement market
- ❖ To investigate the structural and functional problems of the MoTRI in enforcing the abuse of market dominance provisions of Ethiopian competition law.

### **1.5 Significance of the Study**

The study is generally thought to have academic and policy relevance. Among other things, the study is expected to have the following specific significance:

- ❖ It will provide crucial and precise information to the legislative body in order to amend the existing proclamation or introduce new legislation on competition.
- ❖ The MoTRI will benefit from the findings of the research as the study investigates structural, organizational, and functional problems and identifies the areas that need the most attention.
- ❖ It will provide information to be used as a springboard for subsequent or related research for the academic community.

### **1.6 Scope of the Study**

The scope of this paper is focused on the assessment of the enforcement framework of the market dominance provisions of Ethiopia's TCCPP 813/2013.

In relation to abuses of market dominance made by market actors in relation to the TCCPP, the paper particularly focuses on the enforcement framework of the market dominance provisions of the Proclamation on the Cement Market and their practical application, as well as the challenges faced by the MoTRI. The major data sources for the study are the TCCPP 813/2013 and the MoTRI.

## **1.7 Methodology of the Study**

### **1.7.1 Design of the Study**

A mixed research methodology was used throughout the research. The qualitative method was extensively employed in the study. It is used for evaluating and describing the enforcement of law and examining the enforcement regimes to extract the practical problems. The quantitative method is used to examine the opinions of law enforcement experts. Quantitative data with simple statistical tools like percentage and average was used to summarize the data. The researcher designed this method because it appeared to be the most suitable way to address the research questions of the study. The studies on related literature are part of the research methodology to substantiate the existing problems in the country.

### **1.7.2 Data source and collection instruments**

Primary and secondary sources of data are used in the study. Legal provisions of the Ethiopian TCCPP are used to evaluate and explain the prevalent problems.

Primary data were collected from the head and legal experts of the MoTRI anti-trade competitive and legal contravene prohibition desk, the head and regulatory and study experts of the MoTRI value of goods study and regulation desk, construction companies, and judges of the TCCP. Secondary data were extensively used in the research. The secondary data were gathered from different documents, proclamations, books, journals, and articles.

Three data collection instruments were used to collect data from primary sources. A questionnaire was prepared for the experts of the MoTRI anti-trade competitive and legal contravene prohibition desk, value of goods study and regulation desk, and construction companies. Focus group discussions were held with the judges of the TCCP at the ministry of justice. A semi-structured interview was used to gather the opinions of the heads and senior experts of the MoTRI anti-trade competitive and legal contravene prohibition desk and the value of goods study and regulation desk.

### **1.7.3 Sampling technique and targeted population**

The targeted populations were the experts of the MoTRI anti-trade competitive and legal contravene prohibition desk and value of goods study and regulation desk. The legal and regulatory experts are targeted as the main source of data because their responsibility in the regimes is highly related to the enforcement of the trade competition law of the country. The

total legal and inspection experts of the MoTRI are not large enough to take samples from. Therefore, the sample size is equal to the total population of the target population. All available informants were part of the study. The second data sources were construction companies. Construction companies are targeted because they are the main consumers of cement and the prevalent victim by the problem. Three construction companies were randomly selected, and the data gained from these companies was used not to generalize but to support the study. The third data source is the judge of the TCCP at the ministry of justice and the fourth data source were heads of the legal and inspection sections of the law enforcement regimes.

#### **1.7.4 Data analysis and interpretation method**

Selected legal provisions of the Ethiopian TCCPP were systematical arranged and explained related to the problem under discussion. The data collected using questionnaires were organized in frequency tables. A simple statistical tool was used to analyze the data. The data collected using semi structured interview and focused group discussion is arranged to explain the legal and practical problems and the problems of institutions. Analysis and interpretation is made based on the organized data collected with the instruments.

#### **1.7.5 Ethical Considerations**

Ethical consideration is essential in the time of data collection and at the time of data interpretation. Throughout this research process, the researcher was governed by the ethical principles of a research. At the time of data collection, ethical principles were applied in this study by respecting the privacy of respondents and confidentiality of information revealed by the respondents. An official letter from the university was used as means to get permission to collect data from the respondents. The data collection process was conducted by informing the respondents the objective of inquiry in the questionnaire and interview, why the information was required, and what purpose it was needed and the right they have to respond the questionnaire or interview questions. Finally, after the data was collected the researcher has analyzed the data correctly and reported unbiased findings.

## **1.8 Organization of the Study**

The study is organized into four chapters. The first chapter is designed to explain the background of the study, the statement of the problem, the objectives of the study, the research questions, the significance of the study, and the research methodology. The second chapter focuses on a literature review. The third chapter deals with the analysis and interpretation of data. The fourth chapter is the conclusion and recommendation part.

## Chapter Two

### 2. General overview of competition, competition law and abuse of market dominance provisions of Ethiopia's competition law

#### 2.1 Introduction

Competition law is often seen as a weaker form of intervention that focuses on strengthening the market mechanism and hence, aims to protect the competitive process.<sup>15</sup> Competition law is the legal structuring of markets through laying down competition rules.<sup>16</sup> It is the legal tool to oversee the market mechanism and to make sure that this valuable process is protected by focusing on removing unnecessary restrictions on competition.<sup>17</sup> Accordingly, competition law proscribes broad categories of what qualifies as anti-competitive conduct.<sup>18</sup> As such it aims to prevent the unlawful acquisition of market power and, where market power already exists, to control its exercise.<sup>19</sup>

It has been accepted that being in a dominant position is not by itself anticompetitive; rather, it is the abuse of that position, or the exercise of the market power that comes with dominance, that is anticompetitive. “This makes the subject of dominance and its abuse in the area of competition policy and law very fascinating.”<sup>20</sup>

Abuse of a dominating position provisions in competition law frequently feature a number of common elements.<sup>21</sup> Prior to applying the law, it is first essential to identify the relevant market where the potential abuse is occurring. Then, it is necessary to prove that a firm or group of firms has a dominating position in that market. “Third, it is important to identify specific practices that may be harmful to competition and assess their Abuse of dominance cases may have special overall effects in the relevant market(s).”<sup>22</sup>

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<sup>15</sup> K.J. Cseres, INTERSECTION OF COMPETITION AND REGULATION IN ABUSE OF DOMINANCE AND MONOPOLIZATION, Amsterdam Law School Legal Studies Research Paper No. 2021-36 Amsterdam Centre for European Law and Governance Research Paper No. 2021-03. 2

<sup>16</sup> Ibid 4

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> Kububa (n 6)

<sup>21</sup> OECD, A framework for the design and implementation competition law and policy, Abuse of dominance chapter five, <https://www.oecd.org/daf/competition/prosecutionandlawenforcement/27123114.pdf>

<sup>22</sup> Ibid

The standard dominant firm model assumes that there is a large number of small price-taking firms and one big firm typically referred to as the “competitive fringe, and due to its position the dominant firm is modelled as selecting a price that the fringe firms take as given in deciding how much to supply.<sup>23</sup> A firm is in a dominant position in a market when it is in a position to exercise a high degree of market control.<sup>24</sup> A person in a dominant position will be able to set prices or other market conditions without significant constraint from consumers or competitors reaction. A person in a dominant position will thus be able to initiate and maintain a noticeable increase in price, or decrease in supply, quality or innovation level, without suffering an adverse impact on profitability in the short or long term.<sup>25</sup>

The Industrial Development Strategy (IDS), which was authorized in 2002 and is regarded as the nation's first-ever comprehensive industrial development plan, lays out Ethiopia's industrial policies.<sup>26</sup> The IDS designated the following sectors as priority areas for government direct assistance; (i) textile and garment; (ii) meat, leather and leather products; (iii) other agro-processing industries (e.g., sugar and sugar related industries; (iv) Construction; and (v) micro and small enterprises (MSEs).<sup>27</sup> According to Gebreeyesus (2013) the construction sector was assumed to be the basis for the development of other sectors.<sup>28</sup>

The cement industry is a crucial component of Ethiopia’s construction sector for construction industry, as it supplies a necessary input that supports much needed infrastructure development. Ethiopian government has promoting a strategic development plan to bring about fast and sustainable economic growth. This program is anticipated to improve the country's infrastructure and help to reduce its housing shortage, encouraging the local construction and cement markets.<sup>29</sup>

This review assesses several literatures that are done on competition law, especially on the issue of abuse of dominance and the market dominance in the cement industry.

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<sup>23</sup> Kububa (n 6) 2

<sup>24</sup> Ibid

<sup>25</sup> ibids

<sup>26</sup> UNCTAD (n 13) 25

<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> ibid

## **2.2 Trade Competition and Competition Law**

### **2.2.1 The General Overview of Trade Competition and Competition Law**

Competition policy is expected to complement other government policies in attaining sustainable and inclusive growth and development if it is properly conceived and successfully executed in accordance with the economic, social, and environmental realities in a country.<sup>30</sup>

Trade competition is a situation in which sellers compete with one another to attract customers in an effort to increase their sales, profits, and market share.<sup>31</sup> Trade competition can bring benefits to market efficiency, such as encouraging firms to expand productivity, lessen prices and innovate, while rewarding producers with profits and consumers with lower prices, higher quality and wider choice than the case in less competitive market.<sup>32</sup> Trade competition is therefore regarded as a cornerstone of the free market economy.

Trade practice may adopt either fair or unfair methods. Fair trade competition is expressed through businessperson's or firms effort in terms of quality, choice, innovation and service to attract their customers and consumers while unfair competition is expressed through the adoption of restrictive business practices such as exclusive dealing, predatory pricing, forming cartels, and the like rather than focusing on quality, choice, innovation and services.<sup>33</sup> So, trade practice is desired to be fair though it is achieved through different factors. Therefore, maintaining both with a well-designed institutional, legal and practical application needs due attention. It is this deriving force that facilitates countries of the world to have a competition law and enforcing institution.<sup>34</sup>

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<sup>30</sup> UNCTAD secretariat the role of competition policy in promoting sustainable and inclusive growth, Geneva, 6–10 July 2015, UN <https://unctad.org/system/files/official-document/tdrbpconf8d6en.pdf>.

<sup>31</sup> Fikremarkos Merso, Imeru Tamirat Yigezu, Seyoum Yohannes, Yoseph Endashaw and Tilahun Teshome Retta, Review of the Legal and Institutional Framework for Market Competition in Ethiopia. Private Sector Development Hub/AA Chamber of Commerce and Sectoral Associations. ( February 2009).

<sup>32</sup> UNCTAD Secreteriat , Manual on Consumer Protection, UNCTAD/DITC/CPLP/2017/1/Corr.1. (2018)

<sup>33</sup> Harka Haroye, Competition Policies and Laws: Major Concepts and an Overview of Ethiopia Trade Practice Law. (2008) Vol. 2 No.1, Mizan Law Review, <https://www.ajol.info/index.php/mlr/issue/view/7357>

<sup>34</sup> Bogale Anja Abba, Yared Kefyalew Demarso, Critical Analysis of Prohibition of Anti-Competitive Trade Practices in Ethiopia: The Case of Arbaminch Town, Southern Ethiopia School of Law, Wolaita Sodo University, Wolaita Sodo, Ethiopia Beijing Law Review, 25 March 2021

“One study suggests that sustainable competition law must address social and environmental concerns and cannot focus solely on economic issues.” Further, in order to use competition law to promote sustainable and inclusive development, the study emphasizes the need for the identification of appropriate environment and development objectives, their links to international competition rules and the appropriate mechanisms in relation to the specific context of the affected country.<sup>35</sup>

### **2.2.2 Nature and scope of competition law policy**

Unless there is an exemption or exclusion competition law should be a general law of general application; that is, the law should apply to all economic sectors in an economy engaged in the commercial production and supply of goods and services.”<sup>36</sup> In this context, the competition law applies on both private and public and they should be subject to the same treatment.<sup>37</sup> Unless explicit exclusions are granted, competition law is a general law that applies to all economic activities in the majority of industrial countries.<sup>38</sup>

There are essential economic and legal justifications for advancing the recommendation that competition law policy should be applicable in general for all economic sectors.<sup>39</sup> Entities engaged in the similar lines of activity should be subject to the same set of legal principles and standards to ensure equality, fairness and non-discriminatory treatment under the law.<sup>40</sup> Such an approach will result in greater predictability and consistency in the interpretation and application of the law, and promote more transparency, accountability and confidence in the legal and other institutions responsible for the application of the law.

UNCTAD grouped the economic activities that are eligible exemptions into at least four groups:<sup>41</sup> Exemptions aimed at balancing unequal economic or bargaining power; Exemptions aimed at addressing transaction costs, information, and “collective action”

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<sup>35</sup> UNCTAD secretariat(n 30)

<sup>36</sup> R.Shyam Khemani, Application Of Competition Law: UNCTAD ( LECG, Europe 2002)  
[https://unctad.org/system/files/official-document/ditclpmisc25\\_en.pdf](https://unctad.org/system/files/official-document/ditclpmisc25_en.pdf) . 5

<sup>37</sup> Ibid

<sup>38</sup> KITETA ABDI (n 1)

<sup>39</sup> Khemani (n 36)

<sup>40</sup> Ibid 5

<sup>41</sup> Girmaw Amare Alene, the Competition Law and Institutional Framework for Prohibition of Abuse of Market Dominance in the Banking Sector in Ethiopia, Addis Ababa University School of Graduate Studies College Of Law and Governance School of Law  
<http://etd.aau.edu.et/bitstream/handle/123456789/26272/Girmaw%20Amare.pdf>, Dec, 2020. 8

problems; Exemptions that reduce risk and uncertainty and Special sector and interest group demands.<sup>42</sup>

The review of different competition laws suggests that a wide range of exceptions and exemptions have been granted by various jurisdictions.<sup>43</sup> The most common sectors where types of economic activities are exempted are agriculture, labor and transportation.<sup>44</sup> There are also exclusions from competition law in sectors such as financial services, energy, media/publishing and telecommunications (including postal services).<sup>45</sup>

Canada and United States were among the first nations to enact specific competition legislation dealing with anti-competitive business practices (in 1889 and 1890 respectively).<sup>46</sup> In Canada, as late as 1976, the competition law provisions did not apply to the services sector of the economy, or to Crown (State-owned) corporations.<sup>47</sup> And until the competition law was amended, regulations governing the activities of airlines, commercial banks, professional bodies (such as doctors, accountants and lawyers) and infrastructure services (such as telephone and electricity) did not address competition concerns.<sup>48</sup>

“In Ethiopia, Art 4(1) of TCCPP provides that the application is to any “commercial activity” or “transaction in goods and services” conducted or having effect in Ethiopia.”<sup>49</sup> The proclamation does not exempt any “commercial activity” or “transaction in goods or services” on the basis of ownership structure.<sup>50</sup>

### **2.2.3 Objectives of competition policy and competition law**

The objectives of competition policy across different countries indicates that in most jurisdictions, the basic objectives are to uphold and encourage the process of competition in order to promote efficient use of resources while protecting the freedom of economic action of

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<sup>42</sup> Ibid

<sup>43</sup> KITETA ABDI( n 1)

<sup>44</sup> Ibid

<sup>45</sup> Ibid

<sup>46</sup> Khemani (n 36) 11-12

<sup>47</sup> Ibid 12

<sup>48</sup> Ibid

<sup>49</sup> Amare Alene( n 41) 9

<sup>50</sup> Ibid

various market actors.<sup>51</sup> Competition policy has been generally viewed to achieve or preserve a number of other objectives as well: de-centralization of economic decision-making, preventing abuses of economic power, pluralism, fairness and equity, promoting small business, and other socio-political values.<sup>52</sup>

Effective competition regulations can help businesses become more efficient, expand their consumer base, enhance their innovation options, and improve product quality by addressing market failures. According to one study, these circumstances may also encourage businesses to create products that are safer, healthier, more environmentally friendly, ethically sound, and more egalitarian in order to meet the demands of more discriminating and responsible consumers.<sup>53</sup>

### **2.3 Legal and Institutional Framework of Competition in Ethiopia**

One study emphasizes the significance of excellent governance, particularly transparency, accountability, and monitoring, for the successful coordination of competition law and policy enforcement with efficient environmental management.<sup>54</sup>

The revised TCCPP No. 813/2013, which the Ethiopian government has introduced, makes significant modifications to the previous proclamation.<sup>55</sup> The proclamation was introduced in order, among other things, to protect the business community from unfair and anti-competitive market practices, consumers from misleading market practices, and commercial activities to be conducted in accordance with the appropriate practice based on the country's free market economy policy.<sup>56</sup> Various anti-competitive trade practices are prohibited by law. Abuse of market dominance, anti-competitive agreements, mergers, and unfair trade competition are a few of them.<sup>57</sup>

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<sup>51</sup> OECD Global Forum on Competition, the objectives of competition law and policy, center for co-operation with non-members directorate for financial, fiscal and enterprise affairs, <https://www.oecd.org/daf/competition/2486329.pdf>, 29-Jan-2003

<sup>52</sup> ibid

<sup>53</sup> UNCTAD secretariat (n 30)

<sup>54</sup> Hillevi Sundkvist, Business strategy of abuse of dominance ( analysis of different approaches towards self-referencing within the meaning of Art 102 TFEU, UPPSALA UNIVERSITY, Department of law, <http://uu.diva-portal.org/smash/get/diva2:1293691/FULLTEXT01.pdf> (2019)

<sup>55</sup> Anja Abba (n 34)

<sup>56</sup> TCCPP of the FDRE,813/2013 Preamble

<sup>57</sup> Dessalegn Adera, The Legal and Institutional Framework for Consumer Protection in Ethiopia, Addis Ababa University, school of graduate studies school of law (2011).

## **2.4 Enforcement of competition law**

Effective competition law enforcement helps to remove and deter anticompetitive behavior, which is essential for achieving inclusive and sustainable development. In addition, attaining sustainable development goals requires applying exemptions or exclusions to business agreements that support economic development, environmental protection, and green technologies and goods from the application of competition legislation.<sup>58</sup>

## **2.5 Challenges on relating to the enforcement of competition law**

Even though the Ethiopian government has pledged to apply free market economic policy, existing researches suggest that the level of competition in Ethiopia has been very low, there has been the prevalence of anti-competitive practices, especially anti-competitive agreements have been identified as the most prevalent anti-competitive practices are negatively affect consumers.<sup>59</sup>

“There is lack of representation of private sector and other stakeholders including consumers in TCCPA. There are legal gaps and the existing law is not effectually enforced.”<sup>60</sup>

Price fixing is a prevalent problem in Ethiopia, which requires attention and severer sanctions. The prices of goods and services are usually agreed by the traders it deems vital in facilitating economic including trade associations regardless of the quality of the products and services.<sup>61</sup> The lack of effective law enforcement regimes contributes to creating an environment in which many of the ongoing anti-competitive practices of established business communities can persist.

## **2.6 Market Dominance**

### **2.6.1 Market Dominance in Ethiopian law**

Ethiopian TCCPP Article 5(1) states that, No business person, either by him or acting together with others, may carry on commercial activity by openly or dubiously abusing the dominant position he has in the market.<sup>62</sup> abuse of market dominance acts are categorized in to eight under

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<sup>58</sup> UNCTAD secretariat(n 30)

<sup>59</sup>Tessema Elias. Gaps and Challenges in the Enforcement Framework for Consumer Protection in Ethiopia, Vol.9 No,2015 Mizan Law Review,(2015) 83-107.

<sup>60</sup> Dawar, Kamala and Ndaba, Ndluvo, Competition policy and law enforcement in Botswana, Nigeria and Ethiopia: identifying drivers for reform. Journal of Antitrust Enforcement, Sussex Research online (2017) 5 (2) 161-162ISSN 2050-0688

<sup>61</sup> Roberto Zavatta and Samuel Feyisa ,Baseline Survey on Competition and Market in Ethiopia, Private Sector Development Hub/Addis Ababa Chamber of Commerce and Sectorial Associations, 2009;

<sup>62</sup> TCCPP (n 56) article 5(1)

Art.5(2).<sup>63</sup> “The prohibitions cover ; sale of goods below cost of production, unfair selling or purchase price, limiting production, denial of access to an essential facility, price discrimination; refusal to deal, tied and conditional selling and resale price maintenance.”<sup>64</sup>

The first four prohibitions stated under Art. 5(2) (a) to 5(2) (d) are categorical and have no exception. The phrase “without justifiable economic reasons” in the prohibitions listed under 5(2) (e) to 5(2)(h) ‘shows that the prohibitions can have justifications.’<sup>65</sup> Article 5(3) lists down the justifications that can be considered as “justifiable economic reasons for the purpose of applying the provisions of paragraphs (e), (f), (g) and (h) of Article 5(2).<sup>66</sup> Although the acts of abuse of market dominance refer to the prohibited practices of business persons in their relations with competitors, such

### **2.6.2 Abuse of Market Dominance**

A Competition law provisions regarding abuse is one of the most challenging areas of competition law and policy in both developed and developing markets.<sup>67</sup> In competition law, dominant position refers to a position of economic power that an entity holds, making it capable of regulating the relevant market autonomously from any or a combination of the competitors, suppliers, customers or consumers.<sup>68</sup>

A firm enjoying dominant position in the market may not only exercise its market power by exerting a significant influence on the market price or restrain the market output of a specific commodity or service, but may also create entry barriers to other enterprises to operate in the market.<sup>69</sup> acts ultimately distort the scope of choice of consumers –in price, goods and services.<sup>70</sup>

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<sup>63</sup> Elias N. Stebek, Mizan law review , Deliverables and Pledges under Ethiopian Trade Competition Law, The Need for Private Sector Empowerment and Enablement, <file:///C:/Users/hananMH/Downloads/161602-Article%20Text-418786-1-10-2017s0928.pdf>

<sup>64</sup> UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, a review of competition policy in Ethiopia, United Nations [https://unctad.org/system/files/official-document/ditcclp2017d3\\_en.pdf](https://unctad.org/system/files/official-document/ditcclp2017d3_en.pdf) , © 2018

<sup>65</sup> Ibid and TCCPP ( n 56) Art. 5(2)

<sup>66</sup> ibid

<sup>67</sup> OECD, (n 21)

<sup>68</sup> Ibid

<sup>69</sup> Kububa,(n 6)

<sup>70</sup> ibid

### **2.6.3 Acts that are considered as Abuse of Market Dominance**

Once a company's dominance has been proven, the next step in an abuse of dominance case is to determine if the company in issue actually violates the law that forbids abuse of dominance.

Regionally there is COMESA competition regulation that forbids abuse of market dominance. COMESA regulation states that “any abuse by one or more undertakings of a dominant position within the Common Market or in a substantial part of it shall be prohibited as incompatible with the Common Market in so far as it may affect trade between Member States.”<sup>71</sup>

The acts that are considered as an abuse is that:- a) restricts, or is likely to restrict, the entry of any undertaking into a market; b) prevents or deters, or is likely to prevent or deter, any undertaking from engaging in competition in a market; c) eliminates or removes, or is likely to eliminate or remove, any undertaking from a market; d) directly or indirectly imposes unfair purchase or selling prices or other restrictive practices; e) limits the production of goods or services for a market to the prejudice of consumers; f) as a party to an agreement makes the conclusion of such agreement subject to acceptance by another party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the agreement; or g) engages in any business activity that results in the exploitation of its customers or suppliers, so as to frustrate the benefits expected from the establishment of the Common Market.<sup>72</sup>

Two broad types of business conduct have traditionally been recognized as abusive by competition laws and enforcement agencies:<sup>73</sup>

#### **A. Exclusionary Abuse**

Exclusionary abuse includes those practices that are aimed at competitors.<sup>74</sup> In such cases, the dominant firm attempts to suppress competition by weakening its competitors’ ability to compete.<sup>75</sup>

Such strategies can also be used by an organization to exert its market dominance.<sup>76</sup> Such practices include raising competitor’s costs of entering a market, refusal to deal with a

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<sup>71</sup> COMESA Competition regulations; <https://comesacourt.org/wp-content/uploads/2020/01/COMESA-Competition-Regulations-December-2004.pdf>. December 2004

<sup>72</sup> Ibid

<sup>73</sup> Yidnekachew Haile W/Mariam, The Legal Gaps In Controlling Abuse Of Market Dominance In Ethiopia – Appraisal Of The Existing Legal Regime, Addis Ababa Univeristy College Of Law And Governance Studies, School Of Law

<sup>74</sup> Ibid,

<sup>75</sup> Ibid

competitor, charging predatory prices or tying the sale of one product to another.<sup>77</sup> Exclusionary abuses require careful analysis; this should take account of the competitive environment in which the firm operates; because a potentially abusive practice (such as exclusive dealing) may also help organizations compete more efficiently, by, for instance, improving the quality of service to customers and consumers.<sup>78</sup>

## **B. Exploitative Abuses**

The second category of abusive behavior, known as exploitative abuses, includes actions taken by businesses to take unfair advantage of their market power by charging unreasonable prices to customers, treating some customers differently than others, paying suppliers below-market prices, or engaging in similar behavior.<sup>79</sup>

“The abusive practices of a firm in a dominant position are particularly anti-competitive because the market does not offer alternatives for consumers (subject of course to the ease of entry into the market).”<sup>80</sup>

Abusive practices of a dominant firm are of different types and come in different forms, such as: (i) price discrimination; (ii) tied and conditional selling; (iii) excessive pricing; (iv) refusal to deal; (v) predatory pricing; (vi) raising rivals’ costs; and (vii) various forms of vertical restraints.<sup>81</sup>

### **2.6.4 Establishing market dominance**

Competition law provisions as regards abuse of a dominant position include several common elements.<sup>82</sup> First, before the law can be applied it is necessary to define the relevant market in which the possible abuse is realized; Second, it is necessary to establish the existence of a dominant position by a firm or group of firms; Third, it is important to identify specific practices that may be harmful to competition and assess their overall effects in the relevant market(s).<sup>83</sup>

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<sup>76</sup> Ibid

<sup>77</sup> Ibid

<sup>78</sup> Ibid,

<sup>79</sup> Ibid,

<sup>80</sup> Kububa ( n 6)

<sup>81</sup> Ibid

<sup>82</sup> OECD( n 21)

<sup>83</sup> Ibid

Under COMESA also the following factors must be taken into account when determining whether an undertaking is in a dominant position: a) the relevant market, defined in terms of the product and the geographic context; b) the level of actual or potential competition, measured in terms of the number of rivals, production capacity, and product demand; c) entry barriers for competitors; and d) the history of competition and rivalry between rivals in the industry.<sup>84</sup>

When we come to the Ethiopian proclamation it puts three cumulative elements that must be ascertained to establish an abuse of dominance in a relevant market: First, the firm/s must have the actual capacity to control prices or other conditions of commercial negotiations or eliminate or utterly restrain competition in a relevant market. Second, the firm/s must engage in activities that are designated as abusive by the proclamation or by the regulation to be issued for the implementation of the proclamation. Third, the firm/s who engages in abusive practices must have no justifiable economic reasons for engaging in such activities.

## **2.7 Assessment of Market Dominance**

The assessment of the market share of the undertaking is the first criterion in establishing whether an undertaking has a dominant position or not.<sup>85</sup>

Dominant position of market power as “a situation where an enterprise, either by itself or acting together with a few other enterprises, is in a position to control the relevant market for a certain good or service or group of goods or services.”<sup>86</sup> It refers to the actual or potential control of the market by an enterprise or enterprises acting together, or forming an economic entity.<sup>87</sup> Nonetheless, it is of great importance to recall that proof of substantial market share as evidence of the existence of a dominant position is not a constant factor, and, in addition to this, its importance varies from market to market according to the structure of these markets.<sup>88</sup>

The practice of the European courts and the Commission points to the fact that certain market share thresholds are supportive as an indicator when assessing the market power of an

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<sup>84</sup> COMESA(n71)

<sup>85</sup> Gabriel Peric, EU Competition Law and Abuse of Dominance A deep dive into Article 102 of the TFEU, OREBERO UNIVERSITY, <https://www.diva-portal.org/smash/get/diva2:1691421/FULLTEXT01.pdf>,

<sup>86</sup> Kububa( n 6)

<sup>87</sup> ibid

<sup>88</sup> Peric,( n 82)

undertaking. Through case law, the European courts' have developed different percentage categories of an undertakings market share, clarifying what these kind of percentage levels can indicate and how they can be used.<sup>89</sup>

Detecting the relevant product and geographic markets, as well as determining the level of dominance exercised by the firm(s) within the market, are the two main phases in determining if a firm holds a dominant position in a market.<sup>90</sup>

While the geographic market refers to the place where a product is produced or sold, the product market is concerned with the items or services that are bought and sold.<sup>91</sup> In contrast to the geographic market, which refers to the place where a product is produced or sold, the product market is all about the items or services that are purchased and sold.<sup>92</sup>

It is established that dominance refers to a situation of economic strength which manifests in the ability for an undertaking to behave independently of its competitors, customers, and consumers to an appreciable extent.<sup>93</sup>

The ECJ's basic legal test of dominance came to conclude two elements. These two elements are: (1), the ability to prevent effective competition and (2), the ability to behave independently of its competitors.<sup>94</sup>

The ECJ has stated in several of these leading cases that a dominant position of an undertaking derives from a combination of several factors which, taken separately, are not necessarily determinative. This has led to the assessment of an undertaking's position in a market should be in the light of all relevant market circumstances.<sup>95</sup> Therefore, the ECJ and the Commission almost always conducts a four-step approach: 1) strength based on its market share; 2) an assessment of the undertaking's market; 3) an assessment of barriers to entry or expansion within

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<sup>89</sup> *ibid*

<sup>90</sup> OECD (n 21)

<sup>91</sup> *ibid*

<sup>92</sup> *ibid*

<sup>93</sup> *ibid*

<sup>94</sup> *ibid*

<sup>95</sup> *ibid*

the relevant product market; 4) an assessment of countervailing market power, meaning investigating whether competitors or purchasers may offset the undertaking's power.<sup>96</sup>

Expansions by rivals or the possibility of entry of potential competitors are considered in determining whether a firm has dominance in a market or not.<sup>97</sup> An enterprise is more likely to be dominant with a high market share in a concentrated market and where scope for expansion by rivals is limited and entry barriers are very high.<sup>98</sup> Though market share might be an indication of dominance, it has to be complemented with the assessment of conditions for entry and expansion.<sup>99</sup>

The control can be evaluated based on factors such as market shares, total yearly revenue, asset size, and personnel count. Additionally, the measurement should concentrate on a firm's or companies' capacity to sustainably increase prices above (or decrease prices below) the competitive level.<sup>100</sup>

## **2.8 Assessment of market dominance in Ethiopian law**

According to the Ethiopian TCCPP, a businessperson, acting alone or in concert with others, is deemed to hold a dominant market position if he actually has the ability to control prices or other terms of commercial negotiations or to completely eliminate or restrain competition in the relevant market.<sup>101</sup> This would give wide discretion to the competition authority in determining dominance.<sup>102</sup>

The TCCPA is allowed to consider the businessperson's market share, his ability to erect barriers to the entry of competitors, and other elements as the Authority may deem important in determining market dominance.<sup>103</sup>

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<sup>96</sup> Ibid

<sup>97</sup> Competition commission, Assessment of dominant position, Competition law flash guides, <https://competitioncommission.mu/wp-content/uploads/2019/10/Flash-Guides-Assessment-of-dominant-position.pdf>,

<sup>98</sup> Ibid

<sup>99</sup> Ibid

<sup>100</sup> Kububa (n 6)

<sup>101</sup> OECD (n 21)

<sup>102</sup> UNCTAD( n 13)

<sup>103</sup> Amare Alene ( n 41)

This may be assessed “by taking into account the business person’s share in the market” or the capacity of the business person “to set barriers against the entry of others into the market or other factors as may be appropriate or a combination of these factors”.<sup>104</sup> “This solves that problem by providing for the possible use of a dominance threshold based on market shares, which is more objective.”<sup>105</sup> It has become common practice to apply a market share criterion to assess dominance.”<sup>106</sup>

The use of market share thresholds in determining dominance enhances the efficiency of the enforcement of the competition authority.<sup>107</sup> “In that regard, it was found and concluded that market share threshold pose the risk of under-emphasizing or over-emphasizing market shares in certain cases, leading to over-enforcement and under-enforcement.” Therefore, it is not recommended for competition law to state unequivocally that a corporation is a dominant one when it reaches a given market threshold.<sup>108</sup> It is true that market share should not be the sole factor used to determine dominance since it is only one among many.<sup>109</sup> “While a large market share gives the presumption of dominance, other relevant factors in the determination of market power, and import competition.”<sup>110</sup> This is an empty captured in article 6(2) of Ethiopian competition proclamation.<sup>111</sup>

“Article 6(3) of the TCCPP defines the relevant market for the assessment of dominant positions.”<sup>112</sup> According to international best practice, the relevant market as defined comprises both the product/service and geographic dimensions.<sup>113</sup>

According to TCCPP Article 6(5), the council of ministers may decide on regulations that express market dominance in numerical terms.<sup>114</sup> “In this regard, the council of ministers is mandated to determine the numeric expression of market share necessary to establish

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<sup>104</sup> TCCPP (n 56) 6(1)

<sup>105</sup> UNCTAD ( n 64)

<sup>106</sup> *ibid*

<sup>107</sup> *ibid*

<sup>108</sup> *ibid*

<sup>109</sup> *ibid*

<sup>110</sup> *ibid*

<sup>111</sup> *ibid*

<sup>112</sup> *ibid*

<sup>113</sup> *ibid*

<sup>114</sup> *ibid*

dominance.”<sup>115</sup> However, the regulation defining the numerical expression of market share required to prove dominance has not yet been issued by the council of ministers.<sup>116</sup> Hence, the only accessible tools at the hands of the authority to assess market dominance are, the capacity of the firm to set entry barriers to the market and other factors the Authority may consider necessary.<sup>117</sup> “But, in the absence of any indication in the proclamation as to how to measure the capacity of the business person to set barriers and what are the other appropriate factors which help to determine market dominance, the law as it stands could have no answer.”<sup>118</sup>

## **2.9 Challenges to enforcing market dominance provisions of Ethiopia’s competition law**

The complexity of the subject of dominance and its abuse is further increased by the fact that the different types of business practices that are considered as being abusive vary on a case-by-case basis and across countries.<sup>119</sup>

Practical implementation of abuse of dominance, inter alia requires first having a clear definition for the terms of abuse of dominance, second clarity in defining the relevant market, third clarity on how to choose tools to assess abuse of dominance, four a standard to determine share amount in the market, five determining if actual and/or potential capacity of traders is considered while assessing their ability to set barriers on entry, six providing a clear statement about what other factors are considered to be appropriate to assess dominance, and finally six providing sufficient clarity on how the above mentioned multiple tools of assessing dominance could be used together, if possible.<sup>120</sup>

“Failure to provide clarity on these rules, besides indicating the competition law was poorly drafted, sets a considerable challenge to even think of a way of implementing part of the competition law, abuse of market dominance provisions.”<sup>121</sup>

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<sup>115</sup> Amare Alene ( n 41)

<sup>116</sup> ibid

<sup>117</sup> ibid

<sup>118</sup> ibid

<sup>119</sup> Kububa( n 6)

<sup>120</sup> Yidnekachew Haile W/Mariam, The Legal Gaps In Controlling Abuse Of Market Dominance In Ethiopia – Appraisal Of The Existing Legal Regime, Addis Ababa University College Of Law And Governance Studies, School Of Law. 41

<sup>121</sup> ibid

As Yidenekachew observed in Ethiopian competition law of abuse of dominance provisions even though “the proclamation listed acts that are considered an abuse of dominance, there is no clear definition for the term abuse or dominance.”<sup>122</sup> The legislative framework's assessment of abuse of dominance appeared to be unclear and gave the regulatory authority unrestricted power; the statute allowed a variety of assessment instruments from which the authority may select without using any objective standards.<sup>123</sup>

In order to determine relevant market competing goods and “services that can be replaced by one another or substitutable, it is very hard to understand the idea of relevant market to assess dominance in the market.”<sup>124</sup> It is quite difficult to think of this dominance assessment criterion as a working standard after we learn about market share because the rule never provided methods for determining market share.<sup>125</sup> “Regarding capacity to set a barrier on entry the law failed to indicate if actual and/or potential capacity to set barrier against entry shall be considered, the law remains vague and open to subjective interpretation, besides being a challenge for enforcement.”<sup>126</sup> The TCCPA has not even attempted to list or explain those factors to be considered as appropriate.<sup>127</sup> There is no assessment tool, the TCCPA is at liberty to use a combination of any factors or tools to assess dominance.<sup>128</sup> Hence the competition authority may combine any factors at its discretion without any objective criteria without subjective criteria.<sup>129</sup> This makes “the assessment of dominance not predictable in ways that the authority prefers rather than being an objective, clear and predictable rule that will govern the public properly.”

## **2.10 Market Dominance in Cement Market**

Cement is one of the basic ingredients for the construction industry and it is also a critical commodity for society's needs of housing and basic infrastructure such as bridges, roads, water treatment facilities, schools and hospitals.<sup>130</sup>

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<sup>122</sup> Ibid 44

<sup>123</sup> Ibid 45

<sup>124</sup> Ibid

<sup>125</sup> Ibid

<sup>126</sup> Ibid .41

<sup>127</sup> Ibid

<sup>128</sup> Ibid

<sup>129</sup> Ibid

<sup>130</sup> Woldegiorgis Haileyesus, Challenges And Prospects Of Ethiopian Cement Market, AAU collage of Business and Economics collage of BA management, (July 2019)

Globally, cement companies are facing challenges such as uneven economic performance in emerging markets, a new era of political unpredictability that may further destabilize markets, excess industrial capacity, a large inventory of unsold homes, and a generally slowing economy.<sup>131</sup>

As of 2016, there were 19 operational cement plants in Ethiopia. In terms of ownership, all except Mughher Cement and Messebo Cement are privately owned companies. There are four very large companies: Dangote, Derba Midroc, Messebo, and Mughher Cement, each with an installed production capacity of more than two million metric tonnes per year. These four largest producers accounted for close to 75 percent of the total production in 2016, followed by National Cement.<sup>132</sup>

Cement makers Derba Midroc, Mughher, Messebo, Dangote and Habesha control 70% share of production of the Ethiopia's cement market; with Dangote saying its share has now reached 27%. The rest are small cement plants relying on vertical shift kiln technology, according to Ethiopia's Ministry of Industry's 'Cement Industry Development Strategy 2015-2025'.<sup>133</sup>

The interaction of competition and company investment decision have played an important part in lowering costs of production and sustaining more competitive prices. The production costs of Ethiopia cement producers roughly halved from 2012 to 2016 for two main reasons. First, as new large-scale producers entered the market in 2012, companies were under pressure from the competition to cut production costs and realize efficiency as prices fell. Second, the cost of energy decreased, including because of the adoption of more efficient, large-scale production technologies.<sup>134</sup>

“Cement industries worldwide are besieged with anticompetitive practices because of their oligopolistic nature, with most such practices being of a collusive nature, price-fixing and market-sharing arrangements and collusive tendering).”<sup>135</sup> The situation in Ethiopia should not

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<sup>131</sup> *ibid*

<sup>132</sup> Tesfaw Wondimu Tefera and Simon Roberts, The effect of competition on cement prices and the productivity of cement producers in Ethiopia, Fanele Jacana (July 2019 )

<sup>133</sup> *ibid*

<sup>134</sup> *ibid*

<sup>135</sup> UNCTAD ( n 64)

be much different.<sup>136</sup> “Allegations of other anti-competitive practices in the Ethiopian cement industry have focused on instances of ‘hoarding’ and ‘arbitrary price increases’”.<sup>137</sup>

## **2.11 The Institutional framework of competition authority**

### **2.11.1 The structure and function of law enforcement institution**

Although competition authorities do not have a standardized institutional structure around the globe, having independence with at least certain minimal guarantees is thought to offer competition agencies the power to operate impartially.<sup>138</sup>

A competition authority that has formal independence is usually established as an independent institution not physically located in a government ministry.<sup>139</sup> The trend across most jurisdictions in both developed and developing regions is to establish competition enforcement regimes comprising separate institutions that have substantial administrative autonomy from traditionally vertically-integrated ministries.<sup>140</sup>

This is the case in most developed economies as well as in the majority of developing countries and economies in transition.<sup>141</sup> There are, however, differences in that, in some countries (for example, Burkina Faso, Brazil, Tunisia, Viet Nam and Panama), the investigative arm of the competition authority is established as a department (or departments) in a ministry, and the adjudicative arm of the authority is constituted either as a separate collegiate body in the form of a board of commissioners (Brazil) or council (Uruguay, Burkina Faso, Tunisia, and Viet Nam).<sup>142</sup> Therefore, it is possible that formal independence is perceived as being more crucial for the decision-making function and less crucial for the investigative function.<sup>143</sup>

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<sup>136</sup> Ibid P.40-41

<sup>137</sup> Ibid

<sup>138</sup> Amare Alene( n 41)

<sup>139</sup> UNCTAD secretariat, Independence and accountability of competition authorities, CCPB-IGE2014-UNCTADNOTE-EMCF-EN-PDF 14 May 2008. 6

<sup>140</sup> Ibid

<sup>141</sup> Ibid

<sup>142</sup> Ibid

<sup>143</sup> Ibid

“In some cases, a competition authority might start out as a ministerial department but later gain more independence.”<sup>144</sup>

The TCCPA is entrusted with the task of regulating trade practices and consumer protection. It provides “support to industrial self-regulation in order to enable various industrial sectors regulates anti-competitive and unfair trade practices” and organizes “judicial organs with jurisdiction on issues of trade competition and consumers protection”.<sup>145</sup>

The adjudicative benches of the authority shall have the power to take administrative measures and impose fines based on Article 42 of TCCPP on a business person or any person other than a business person who violates prohibitions provided under Part Two of the Proclamation and to order payment of compensation in accordance with the relevant laws to business persons victimized by acts of unfair competition committed in violation of the provisions of Part Two of the Proclamation.<sup>146</sup>

“Any business person who violates the provision of abuse of dominance provisions shall be punished with a fine from 5% up to 10% of his annual turnover.”<sup>147</sup> According to Article 42 of the Proclamation, the TCCP Authority's adjudicative benches "shall have the judicial competence to impose such the administrative fines."<sup>148</sup>

The administrative measures may include ordering: a) the discontinuation of the act pronounced unfair; b) the taking of any other appropriate measure that enables to reinstate the victims competitive position; or c) the suspension or revocation of the business license of the offender.<sup>149</sup>

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<sup>144</sup> UNCTAD secretariat, Independence and accountability of competition authorities, CCPB-IGE2014-UNCTADNOTE-EMCF-EN-PDF 14 May 2008. 6

<sup>145</sup> Supra note 47

<sup>146</sup> TCCPP ( n 56) article 32(1(a and b)

<sup>147</sup> Ibid article 42(1)

<sup>148</sup> Ibid , article 42

<sup>149</sup> Ibid article 32(2)

Currently the adjudicative bodies provided under trade practice and consumers protection proclamation No 813/2014 given to Ministry of Justice in order to implement the provisions relating to judicial function provided thereof.<sup>150</sup>

### **2.11.2 Gaps in the Autonomy and Powers of the TCCPA**

Most issues with the authority's institutional independence have to do with how it interacts with other regulators, the executive branch of government, and other institutions of regulation, as well as how it uses its authority to carry out its duties and manage its budget.<sup>151</sup>

The absence of a clear statement regarding the independence and accountability of the Appellate Tribunal is the other obstacle that can hinder the efficient enforcement of the competition law.<sup>152</sup> The TCCPP omits details regarding the entity to whom the tribunal shall be accountable as well as concerns regarding the source of the tribunal's funding and the method of managing its judges.<sup>153</sup>

The TCCPA in Ethiopia has established as an “autonomous federal government body having its own legal personality.”<sup>154</sup> This envisages independence in the appointment of the Director General and the judges of the tribunals. However, The Authority is accountable to the Ministry of Trade.<sup>155</sup> The director general and the judges of appellate Tribunal of the authority shall be appointed by the Prime Minister.<sup>156</sup>

As Kahsay observes, the autonomy of the Authority would be directly or indirectly affected due to (a) the accountability of TCCPA to the Ministry of Trade, (b) the power of the Prime Minister to appoint the Director General of TCCPA and the judges of the appellate tribunal, (c) “the application of the civil service law to judges of the authority”, (d) “the power of council of

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<sup>150</sup> Definition of Powers and Duties of the Executive Organs Proclamation Number 1263/2021, Article (22(1) (o and q) 22(2) and 106(2).

<sup>151</sup> Girmaw Amare Alene, The Competition Law And Institutional Framework For Prohibition Of Abuse Of Market Dominance In The Banking Sector In Ethiopia, Addis Ababa University School Of Graduate Studies College Of Law And Governance School Of Law <http://etd.aau.edu.et/bitstream/handle/123456789/26272/Girmaw%20Amare.pdf>, Dec, 2020

<sup>152</sup> Ibid

<sup>153</sup> Ibid

<sup>154</sup> TCCPP(n 56) Art. 27(1)

<sup>155</sup> Ibid 27(1)

<sup>156</sup> Ibid 28(1) and 35(1)

ministers to approve annual budget of the authority”, and (e) “absence of ... private sector representation in these competition authority”.<sup>157</sup>

Girmaw observed that “though the Competition Authority is structurally separated from any Mministry, it is still affiliated to the ministry of trade. The authority is made responsible to the ministry of trade in its day today activities.”<sup>158</sup> As a result, political factors inside the government may have an impact on the authority as a whole.<sup>159</sup>

The competition authority should have been financed by funds from different sources but the source of funds for the Ethiopian competition authority is limited to the fund to be allotted by the government.<sup>160</sup> This may seriously hamper the independence of the authority as the budget allocating body may make the release of the budget conditional upon its satisfaction on the overall aspects of the authority.<sup>161</sup>

Currently the Powers and Duties of the TCCPA under TCCPP number 813/2013 other than adjudicative body is transferred to the MoTRI.<sup>162</sup> Hence, the analysis under chapter three is done taking into account of this institutional change and the practical and institutional challenges based on Institutional framework of the MoTRI.

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<sup>157</sup> Girmaw Amare Alene, Supra Note

<sup>158</sup> Ibid

<sup>159</sup> Ibid

<sup>160</sup> Girmaw Amare Alene, Supra Note

<sup>161</sup> Ibid

<sup>162</sup> Definition of Powers and Duties of the Excutive Organs Proclamation Number 1263/2021, Article 22(1(q) p. 13774

## Chapter Three

### The Legal Loopholes and Practical and Institutional Challenges of Ethiopia's Law vis-à-vis the Cement Market

#### **3.1 The Legal Loopholes**

##### **3.1.1 Gaps in the Assessment of Market Dominance**

A dominant position in a certain market may be assessed by taking into account the business person's share in the market, his capacity to set barriers against the entry of others into the market, or other factors as may be appropriate, or a combination of these factors.<sup>163</sup> In general, there are two ways to measure market dominance: the first is a company's market share, and the second is its ability to create obstacles to other companies entering the market. This provision is complicated and not clear for enforcement, and the main problems are listed below:

#### **A. Relevant market**

The main elements essential to determining market dominance are the relevant markets. Relevant markets combine product and geographic markets. The product market is stated ambiguously in the proclamation. The law states that the relevant market used for the assessment of a dominant position is the market that comprises goods or services that actually compete with each other or goods or services that can be replaced by one another,<sup>164</sup> So this provision needs clarity about which goods or services are replaced by one another and how we distinguish them: is it in the characteristics of the product, in their prices, or in their intended use of the product? This provision does not give an answer to this ambiguity. So before assessing market dominance by the product market, the word "product market" needs a clear definition. So this is considered one of the main gaps in the law and is difficult to enforce.

When we come to geographic market the law states that geographic area of such market is the area in which the conditions of competition are sufficiently homogeneous and can be distinguished from the conditions of competition in neighboring markets.<sup>165</sup>

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<sup>163</sup> TCCPP( n 56) article 6(2)

<sup>164</sup> Ibid 6(3)

<sup>165</sup> Ibid 6(4)

The proclamation does not specify how or where to where the geographic market was decided. Because the law does not specify when or how it is decided, businessmen frequently complain about the relevant market's decision. The other difficult thing is where this relevant market is. What if one business person is dominant in one place but not in another? Due to this factor, it is difficult to determine the relevant market, and it is open to subjective criteria and interpretation. When a businessperson has numerous branches and is dominant in one branch but not in another, it can be challenging to determine dominance. The fact that it is difficult to identify the exact location of the relevant market is another problem with this provision.

#### **b. Market Share**

The other criteria to determine market dominance is the businessperson's market share. But the degree of market share is also open to subjective criteria, and the law does not specify which business person has the highest share in order to specify whether one business person is dominant or not.

The law states that the degree of market dominance may be specified by the regulation, which has not been legislated yet. So without defining the degree of share, it is difficult to enforce the provision.

#### **c. The scope of application of the abuse of market dominance provisions**

To some jurisdictions, the concept of market dominance refers not only to the situation where an enterprise acts unilaterally, but also to the situation in which two or more comprises acting together have market power or have the incentive to act in lock step and together they have market power(collective dominance).<sup>166</sup> The proclamation in Ethiopia has recognized collective dominance; stating that no business person, either by him or acting together with others, may carry on commercial activity by openly or dubiously abusing the dominant position he has in the market.<sup>167</sup> but it is confusing that the article states that “no businessperson either by him or acting together with others” is ambiguous, however, whether the statement in the article that "no businessperson, either by him or acting together with others," refers only to various legal entities

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<sup>166</sup> UNCTAD; eighth united nations conference to review all aspects of the set of multilaterally agreed equitable principles and rules for the control of restrictive business practices; model law on competition(2020),revised chapter Iv; (18 September2020)5

<sup>167</sup> TCCPP ( n 56) Art. 5(1)

that are part of the same corporate group or whether it could apply to legally and economically independent firms holding a collective dominant position. It is ambiguous how the article has been applied; does it apply to distinct businesses with similar corporate groups, to firms that are legally autonomous, or to both business persons?

The other issue is that the proclamation states acting together with others; it indicates that businesspersons may be dominated by more than one person, but it needs clarification if it applies to the oligopolistic nature of abuse or not. Because there are some markets that are less competitive because of the small number of market actors, they may abuse the market against consumers (exploitative abuse). So whether this provision applies to those sectors or not is not clear. So it is one of the gap in the proclamation on the application of abuse of dominance provisions.

**d. difficult to assess market dominance in collective dominance**

As per the wording of Article 5(1) of the proclamation, we understand that it recognizes both single and collective dominance. But when we come to the method of assessment of market dominance, it works more of for single dominance, and it is difficult to apply the assessment method to collective dominance.

Article 6 of the proclamation states that a business person either by himself or acting together with others in a relevant market, is deemed to have a dominant market position, if he has the actual capacity to control prices or other conditions of commercial negotiations or eliminate or utterly restrain competition in the relevant market.<sup>168</sup> The assessment is based on the article 6(2), (3) and (4) of the proclamation. Among those methods of assessing market dominance the first one is a dominant position in a certain market may be assessed by taking into account the business person's share in the market or his capacity to set barriers against the entry of others into the market or other factors as may be appropriate or a combination of these factors.<sup>169</sup>

This assessment method is used more of for single dominance issues. In the case of a collective dominance, how is the market share taken and calculated? If they dominate the market

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<sup>168</sup> Ibid 6(1)

<sup>169</sup> Ibid 6(2)

collectively, how do we assess their market share? If all business people increase excessive prices, hoard and limit their products, and they sell them on the improper channel, it directly abuses the consumers. In this case, where was the market share taken from? They are all committing acts of abusive conduct against consumers, not other competitors. So assessing market dominance by market share is challenging to apply to collective dominance.

The second assessment method is the business person's capacity to set barriers against the entry of others into the market; this is used for a type of exclusionary abuse that does not directly affect consumers. If one business person acting together with others abuses consumers by increasing prices, it cannot be assessed by this method because the entry barrier assessment is used for the abuse against the other competitors, not for the abuse that directly affects consumers. Entry barriers are used for newcomers, but if the abuse is on the consumers, it is difficult to assess abuse by the method of assessing entry barriers.

When we come to the cement market, the quantitative data under tables 1 and 2 and the qualitative data on the interview indicate that there are acts of abuse that are listed under art. 5 of the TCCPP and that the acts observed in the cement market are more of exploitative abuse than exclusionary abuse because of the oligopolistic nature of the market. Oppositely, the assessment method of market dominance is used more often for exclusionary abuses. This makes it difficult to assess the cement market under Art. 6 of the TCCPP.

### **3.1.2 Absence of Regulation and Directives**

There is a trade competition and consumer protection proclamation that is enacted in order to curtail unfair trade competition and unlawful acts against consumers. Even though the proclamation was enacted, its enforcement has been difficult because of the absence of clear regulations and directives. The proclamation was implemented starting in 2013, but there have been no regulations or directives until now. The things that are explained below need clear and detailed regulation in order to enforce the abuse of market dominance provisions under the proclamation.

**a. Raising rivals cost**

The proclamation states that “doing directly or indirectly such harmful acts, aimed at a competitor, as selling at a price below cost of production, causing the escalation of the costs of a competitor or preempting inputs or distribution channels are abusive acts.”<sup>170</sup>

It is difficult to determine how one firm is raising rivals costs without any objective measures and which acts are considered acts raising rivals' costs. There is no clear standard for which acts have the power to raise others costs or how abusive firms raise rival firms' costs. So it needs provisions that clearly stipulate which acts are considered acts that raise rival costs. If one firm is doing such detailed acts, it is easy to decide whether another firm is raising others costs or not. But in the absence of such clear provisions, it is difficult to enforce the provision.

**b. Entry Barrier**

Barrier to entry can vary country to country according to the level of development of a market.<sup>171</sup>

The barrier is distinguished in many countries as characteristics, strategic and legal barrier.<sup>172</sup>

When we come to “article 6 of the proclamation states that one business person is said to be dominant if he has the capacity to set barriers against the entry of others into the market.”<sup>173</sup>

Barrier to entry; the law does not describe which acts are discouraging new entrants in that market, which must be described at least in an illustrative list by the directives. Then, if one firm is doing those specified acts, it is easy to say that that business person is dominant. So there must be detailed rules about which acts are considered barriers for new entrants in that market.

**3.2 Enforcement of abuse of market dominance provisions in the cement market**

“Cement industries worldwide are besieged with anticompetitive practices because of their oligopolistic nature, with most such practices being of a collusive nature, price-fixing and market-sharing arrangements and collusive tendering.”<sup>174</sup> The situation in Ethiopia should not be

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<sup>170</sup> Ibid article 5(2)(b)

<sup>171</sup> united nation conference ( n 64) 4

<sup>172</sup> ibid

<sup>173</sup> TCCPP ( n 56) article 6(2)

<sup>174</sup> UN CONFERENCE(n 64) 40

much different.<sup>175</sup> 'Hoarding' and 'arbitrary price rises' have been the main subjects of allegations of additional anti-competitive behavior in the Ethiopian cement sector.<sup>176</sup>

Based on the data collected from the primary and secondary sources, it appears that the abuse of market dominance provisions is not enforced in the cement market. The abuse of market dominance is highly detected in the market and highly abused consumers.

### **3.2.1 Exploitative type of abuse in the cement market**

According to the literature discussed in the previous chapter, there are two types of abuse of dominance: exclusionary and exploitative. From the wording of Article 5(2) of the TCCPP, it is evident that such abuses were intended to fit within the meaning of the art.

One of the examples of exploitative abuses put forward in the art were hoarding or diverting, limiting production, , preventing or withholding goods from being sold in the regular channels of trade;<sup>177</sup> directly or indirectly imposing unfair selling price;<sup>178</sup> without justifiable economic reasons discriminating customers in prices and other conditions in the supply and purchase of goods and services<sup>179</sup> and without justifiable economic reasons and in connection with the supply of goods or services, imposing such restrictions as to where or to whom or in what conditions or quantities or at what prices the goods or services shall be resold or exported<sup>180</sup> considered as exploitative abuse of market dominance

Based on the quantitative data indicated under Table 1, the majority of the respondents, which is 80% of the respondents, have replied very high and high regarding the existence of the problem of price fluctuation in the cement market. From the respondents, only 20% have replied medium to this problem. Regarding the problem of directly or indirectly imposing unfair selling and purchasing prices on the cement market, the majority of the respondents, which is 93% of the respondents, have replied very high and high. From the respondents, only 7% have replied medium to this problem.

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<sup>175</sup> Ibid 40-41

<sup>176</sup> Ibid

<sup>177</sup> Trade competition and consumer protection proclamation (n 64) article 5(2)(a)

<sup>178</sup> Ibid 5(2)(c )

<sup>179</sup> Ibid 5(2)(f)

<sup>180</sup> Ibid 5(2)(h)

In addition to the table 1 under table 2, the majority of the respondents, which is 100%, have replied very highly (73%) and highly (27%) regarding the existence of the problem of price fluctuation in the cement market. When we come to the problem of the existence of the problem of directly or indirectly imposing unfair selling and purchasing prices on the cement market, the majority of the respondents, which is 100% of the respondents, have replied very high (64%) and high (36%).

The above quantitative data indicates that there is directly and indirectly imposing unfair selling and purchasing price and high price fluctuation in the cement market. Those acts are among the acts considered as an abuse by the TCCPP and it is highly observed in the market.<sup>181</sup> so according to Art 5 of the proclamation, if the market has shown this type of act, it is considered that there is abuse in the market.

In relation to limiting, hoarding and amassment of cement products the quantitative data indicated under table 1, majority of the respondents that is 87% answered limiting and hoarding cement products are very high and high problems. Only 13 percent of the respondents give medium rating for limiting and hoarding cement products. Regarding to an amassment of cement products, majority of the respondents that is 73% of the respondents have agreed amassment of cement products is a prevalent problem. And 27% responded that the problem of amassment of cement products is medium.

In addition to table 1 under table 2, majority of the respondents that is 73% answered limiting and amassments of cement products are very high and high prevalent problems. Only 27 percent of the respondents give medium rating. Regarding to hoarding of cement products, majority of the respondents that is 73% of the respondents have agreed hoarding of cement products is a prevalent problem. The rest of the respondents which is 18% responded that the problem of hoarding of cement products is medium and 9% replied the level of the problem is low.

In addition to the quantitative data, the qualitative data also implies that there is a problem with limiting and hoarding cement products. There is a tendency for cement producers to limit their products, and the ministry proved that hoarding of cement products is mostly done by wholesalers and retailers and rarely by producers. Therefore, based on both the quantitative and

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<sup>181</sup> TCCPP (n 64) Art.5(2)(c)

qualitative data, it is possible to conclude that limiting, hoarding and amassing cement products are prevalent problems. Limiting, hoarding, and amassing of products are prohibited, and these acts are the main indications of abuse in the cement market.

When we come to complaints by consumers on discriminatory acts between consumers, the quantitative data obtained from Table 1 shows that the majority, which is 66% of the respondents, responded very high. The rest of the respondents, which is 13% responded medium, and 20% responded low. The same is true in the complaints by customers on discriminatory acts between customers, where the majority of the respondents, which is 80%, replied very high. The rest of the respondents, which is 13%, responded medium, and only 7% responded low.

The data shows that consumers and customers complain about discriminatory acts to the MoTRI. That is the main indication that there are discriminatory acts between consumers and customers. Discriminatory acts are among the abuses that are proclaimed in the TCCPP under Art. 5.

When we come to the decision given for the complaints of consumers and customers, 53% of the respondents responded that there is a problem with the delayed decision given for the complaints of consumers and customers. The rest of the respondents, which is 13%, responded medium, and 20% responded low and very low for a delayed decision given for the complaints of consumers and customers.

Based on both the quantitative and qualitative data we can conclude that exploitative abuse of dominance has been highly realized in the cement market and all the above abusive acts are observed in the cement market. There is not enough competition in the cement market to provide a choice and quality of product for consumers. This reflects the way dominant businesses exploit their customers by charging excessive prices and selling through an improper channel. This is mainly because of the oligopolistic nature of the cement market.

### **3.2.2 Oligopolistic nature of the cement market**

When there are only a few businesses in a certain market that collectively provide all or nearly all the goods or services, that market is said to be in an oligopoly. The players in the cement market maximize their joint profits by restricting production while subsequently increasing prices.

In the cement market, consumers are paying a price that is overly competitive because of the oligopolistic nature of the market. If the competition were higher, the firms would need to lower their prices. In the cement market, there is non-competitive price stability and almost no price competition. The actors in the cement market are aware that there is a shortage of cement in the market; this gives them confidence, and they know the consumers does not have other choices. The abuse of market dominance provisions are difficult to enforce in this type of market.

### **3.3 The practical challenges of enforcing abuse of market dominance provisions in the cement market**

#### **3.3.1 Difficulty determining unfair selling and purchasing prices in the cement market**

For many enforcement authorities it can be difficult to determine excessive price; this is partly because it can be difficult and time consuming to determine firms costs, which must be known to judge whether prices charged are excessive and to set the right price.<sup>182</sup>

In Ethiopia, it is difficult to determine excessive prices on the cement market. There are different factors that raise the prices on the market. Among the main reasons that are raised by producers are a shortage of coal, a shortage of foreign currencies, a lack of spare parts for the factory, and high transport costs. These factors cause them to raise prices, and for the enforcement authority, it is difficult to determine whether the prices are excessive or not.

#### **3.3.2 Incompatibility of demand and supply in the cement market**

Most of the abusive acts that are discussed in the proclamation are observed in the cement market. But in order to apply the competition law in one economy, demand and supply must be compatible. In the cement market, demand and supply are not compatible; there is incommutability between demand and supply.

Based on tables 3.1 and 3.2, there were 15 cement factories in 2010 and 2011. The total production Ton per year is 8,418,789.63 and 8,831,070.17; the total sale is 8,269,125.59 and 8,135,991.05 in 2010 and 2011, respectively.

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<sup>182</sup> OECD, A framework for the design and implementation competition law and policy, Abuse of dominance chapter five, <https://www.oecd.org/daf/competition/prosecutionandlawenforcement/27123114.pdf>

Under table 3.3, among the 15 cement factories in 2010 and 2011, it remains that 14 cement factories and the Inchinini bedrock factory are out of the market. When we come to tables 3.4 and 3.5 from 14 factories in 2012, 12 remain in 2013 and 2014. Dashen, Inchinin, and Fenghuan and Messebo, Inchinin, and Dashen factories are out of the market in 2013 and 2014, respectively.

So based on the data shown, the number of factories and the total tonnes of production and sales decreased from year to year. And when we come to the construction sector, it is highly developing in Ethiopia, and the demand for cement products is high, but the low number of cement factories does not cover the need for the products. Nowadays, based on table 3.5, there are only 12 active cement factories: Dangote, National, Pioneer, Capital, Derba, Mughar, Dashen, East, Zhongshan, Habesha, Ethio, and Kuyu in 2014 E.C. Because of the shortage of the cement product, it is difficult to apply and enforce the abuse of market dominance provisions of competition law in the cement market.

### **3.3.3 Abuse of information**

The main challenges of the enforcing institution in order to curb the hoarding, limiting and amassment of products are misleading of information at the factory level about their capacity for production. According to the interviewee, mostly cement factories are reporting below their capacity of production; the actual capacity of their production and the information given to the regulatory body about their capacity of production are different. The abuse of information makes them comfortable selling the product through the improper channel. Cement is also sold beyond the regular time and place of sale.

For the regulatory body, it is difficult to exactly know the actual capacity of production at the factory. Due to this reason, they do not know how much product is on the market.

In relation to this transaction on the cement market, it was made without receipts in order to hide the actual selling price. Because of this, the enforcing body has no clear data on the capacity of the cement manufacturers, their actual products, or how much their selling price is. This makes it challenging for regulatory bodies to control the illegal and abusive acts that are observed in the cement market.

### **3.3.4 The intervention of illegal brokers are challenge for the distribution of cement**

Based on the information obtained from table 1, the majority which is 66.6% of the respondents responded very high and high for the existence of the problem of cement products being distributed in the improper channel. The rest of the respondents which is 13% responded medium and 20% responded low and very low for the distribution of cement products in the proper channel.

In addition to table 1 the information obtained from table 2, the majority which is 54% of the respondents responded very high and high for the existence of the problem of cement products being distributed in the improper channel. The rest of the respondents which is 45% responded very low for the distribution of cement products in the improper channel.

Based on the qualitative data the main challenges that are the cement are distributed in the improper market channel is the intervention of illegal brokers on the market.

The intervention of illegal brokers is highly observed in the cement market, and it is a strong headache for enforcing institutions in order to enforce the law in the cement market. The intervention of illegal brokers in the cement market makes that cement distributed through an improper channel at a high price. The main difficulty is that the brokers are illegal and do not have addresses that can be used to control them and take administrative measures against them.

### **3.3.5 Absence of peace**

The insecure location of cement manufacturers made supervision and controlling activities harder. According to the respondent of the interviewee, the authority had started a study on the cement market in 2018 G.C but they stopped the study because of the absence of peace at the location where most cement factories are located. The institution has been unable to prepare applicable supervision tools to monitor the status of the market in general. Therefore absence of peace is also a challenge to conduct investigation and take measures.

### **3.3.6 Government Intervention**

In recent times, the government has heavily intervened in the cement market. Even though Ethiopia follows a free market economy, the government can intervene in the market if they believe that the market needs regulation and the market does not lead by free market economic system. In the cement market, there are many abusive behaviors, including excessive pricing,

hoarding, and limiting cement products. The products are not distributed through the proper channel. Because of these factors, the government intervenes by way of regulation to correct the market failure in the cement market. The government intervened in the market in two ways: the first is by price fixation, and the second is by determining quotas. But because these interventions have not solved the problems, the government issued new directives to avoid quota fixation, so that the cement market actors to choose their customers by themselves, but the price has continued as fixed by the government. But according to the interviewee, the intervention of the government did not solve the problems; rather, it aggravated them. Before the intervention of the governments, there was a cement product on the market, but the price was high. After the intervention, there was no product on the market, and they sold it at a high price through an improper market channel. If the government intervenes only through the competition law, it may be better than through regulation.

### **3.4 The institutional and structural challenges of enforcing abuse of market dominance provisions in the cement market**

#### **3.4.1 Limited number of human resources and a shortage of budget**

Based on the quantitative data indicated under table 1, majority of the respondents which is 87% of the respondents have replied very high and high regarding the existence of the problem of small number of supervisors to follow up the enforcement of the law at the market and budget allocated for regular supervision in abuse of market dominance. From the respondents only 13% of have replied medium to these problems.

Regarding to the inadequacy of follow up on the abuse of market dominance in cement market; the quantitative data indicated under table 2, majority of the respondents which is 63% of the respondents have replied very high and high; from the respondents 27% of have replied medium and only 9% replied very low.

In addition to the above quantitative data, the qualitative data also indicates that there is weak regulation system in the cement market. So this indicates that there is a problem with a weak and inadequate follow-up system in the cement market. So in this institutional capacity, it is difficult to curb the problems in the cement market.

The enforcing institution encounters different practical problems in implementing the trade competition law of the country. The experts working in the institution are very small, and most

of them have no rich experience to fulfill their mission because of the complexity of competition, especially abuse of market dominance issues. According to the data, there are 9 legal experts in the anti-trade competitive and legal contravene desk and 12 value of goods study and regulation desk experts.

Based on the quantitative data obtained from table 1, the majority which is 80% of the respondents have replied very high and high regarding the inadequate action research conducted on the abuse of cement market. From the respondents only 13% and 7% have replied medium and low respectively to this problem.

According to article 30(4) of the proclamation<sup>183</sup>, the authority has the mandate to conduct a study and research in connection with trade competition and consumer protection, but the quantitative data indicates that even if conducting research on the market is one of the responsibilities of the institution given by the law, the fulfillment of those responsibilities regarding the abuse in the cement market is low. So this is one of the factors contributing to the continuing abuse in the cement market.

The institution had a research team study the market situation and gives a result to the legal experts for investigation, but that desk was canceled by the reform of the structure of the authority. So those nine legal experts have the mandate to study a market, conduct investigations, and also institute action on the abuse that has happened in all economic sectors and economic activities of the country. The work needs different professionals, not only legal experts, in the anti-trade competitive and legal contravene prohibition desk because their work is not only legal but also requires business and economic knowledge, especially in the investigation process.

Regarding to the problem of lack of facility to conduct supervision of the market regularly the majority which is 80% of the respondents have replied very high and high; From the respondents only 13% and 7% have replied medium and low respectively based on the quantitative data obtained from table 1 .

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<sup>183</sup> Ibid Article 30(4)

Based on the quantitative data obtained from table 1, the majority which is 53% of the respondents have replied very high and high regarding the absence of clear tools to enforce the abuse of market dominance in the cement market. From the respondents only 33% and 13% have replied medium and low respectively to this problem.

The institution has no adequate budget to run the supervision and control activities required by law. The institution undertakes the supervision and controlling activities to regulate and bring fair markets within its limited budget and human resources.

### **3.4.2 Autonomy and independence of the enforcing institution**

The TCCPA was established by proclamation number 813/2013 as an autonomous government institution. At that time, the authority was established as an autonomous body with a legal personality, and its accountability was to the Ministry of Trade. The appointment of the head of the authority is under the ministry of trade, and its ratification is by the prime minister. The budget of the authority is allocated by Council of Ministers. According to literatures though the competition authority is structurally separated from any ministry, it is still affiliated to the ministry of trade. The authority is made responsible to the ministry of trade in its day today activities.<sup>184</sup> As a result, the authority as an entity may be influenced by political considerations of the government.<sup>185</sup>

Based on the quantitative data indicated under table 1, majority of the respondents which is 83% of the respondents have replied very high and high regarding the existence of the problem of absence of clear autonomy to control the abuse of market dominance in the cement market. From the respondents only 17% of have replied medium rating to this problem.

This is the main indication that there is no clear autonomy in the enforcing institution to effectively enforce the proclamation. And this is the major problem and challenge to the continuous abuse in the cement market.

Currently the problem of the autonomy and independence of the authority was aggravated by the proclamation number 1263/2021 Definition of Powers and Duties of the Executive Organ. This

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<sup>184</sup> Girmaw Alene supra note

<sup>185</sup> Ibid

proclamation made it the authority part and parcel of the MoTRI.<sup>186</sup> Therefore, the level of autonomy and independence in the TCCPA is eroded by the proclamation number 1263/2014.

The experience of other countries is in the establishment of institutions that are more autonomous and independent. In Kenya, a similar institution with similar responsibilities is established by law as a legal entity, whose head is recruited by the president and ratified by the parliament, and whose budget is allocated from the government treasury. The authority is accountable to the president of Kenya. In England, the head of the authority is selected with open competition by the ministry of business and ratified by the parliament. Its budget is allocated from the central treasury, and its accountability is to the parliament.

As all of my interviewees responded, the powers and duties of the authority transferred to the MoTRI make the work of trade competition and consumer protection not worthy of attention. Which means the MoTRI has many duties and responsibilities, and the MoTRI's plans and works are different, not only giving attention to TCCP. But before that the authority's main works and goals are only from the TCCP perspectives, and the main duties of the authority are to protect the business community from anticompetitive and unfair market practices, protect consumers from misleading market conduct, and make the system conducive to the promotion of a competitive free market.

The other problem is that it hinders the autonomy and independence of the trade competition-enforcing institution. The competition authority and the MoTRI have distinct objectives when it comes to their jobs.

The works of the MoTRI are the works of executives; they are highly engaged in the trade and give and cancel licenses, trying to develop the trade and encourage trade actors, but when we come to the competition authority, it works more of a regulatory role and takes measures against businesspersons who abuse the market, so in their duties and behaviors of their work, they are different objectives. The inclusion of the regulatory body in the executive body makes autonomy and independence of the institution questionable.

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<sup>186</sup>Definition of Powers and Duties of the Executive Organs Proclamation Number 1263/2021, Article 22(1)(o),(q), 22(2) and 106(2)

### **3.4.3 Weak Awareness Creation by the MoTRI**

Based on the quantitative data indicated under table 1, majority of the respondents which is 93% of the respondents have replied very high and high regarding the existence of the problem of weak awareness creation activity for stakeholders' about abuse of market dominance in the cement market. From the respondents only 7% of have replied medium rating to this problem.

In addition to the table 1, also in the table 2, majority of the respondents which is 72% of the respondents have replied very high and high regarding the existence of weak awareness creation activity for stakeholders' about abuse of market dominance in the cement market. From the respondents 18% of have replied medium and only 9% replied low.

So this shows us that there is low awareness about abuse of market dominance among the stakeholders. So this is one of the duties that are given for TCCPA under Article 30(6) of the TCCPP, but the accomplishment of this duty is very low. The purpose of these articles is to inform stakeholders about their rights make them to protect themselves from abuse but the result of the non-accomplishment of their tasks by the institution hinders the rights of stakeholders.

### **3.4.4 The institutional challenges to enforce the abuse of market dominance provisions in the cement market**

As the interviewee said, even if abusive behaviors are observed in the cement market, abuse of market dominance provisions has not been enforced yet. The enforcing body is not being investigated because they did not get an order from higher officials.

Based on the TCCPP the TCCPA shall conduct investigations where there is sufficient ground to suspect, based on its own information or information given to it by any person, that an offence has been committed.<sup>187</sup> The interviewee said, even if there are abusive acts, and they observed that in the cement market, they have the right to investigate and suspect the actors by the TCCPP, but they do not have the professional independence to start the investigation by themselves as a legal contravene desk.

If these abusive acts are observed in other markets other than the cement market, they have received an order from higher officials to start the investigation, and they must launch the

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<sup>187</sup> Ibid article 36(1)

investigation and come up with a solution as quickly as possible. But in the cement market there is no order given from higher officials within this all problems and abuses are in the cement market. So they do not have professional independency to investigate any type of abuses observed in the market as experts and as a desk.

The main challenge is that practically no autonomy and independence to conduct further investigations and take corrective administrative and legal measures in the cement market. The anti-trade competitive and legal contravene prohibition desk has to wait and get the green light from the higher officials before taking any further actions or conducting investigations.

MoTRI used the method of solving the problem is regulation and intervention in the market. So the competition enforcers are also under the ministry's decision and do not have the independence to conduct investigations and solve the problem under the competition and abuse of dominance provisions.

## **Chapter Four**

### **Conclusion and recommendations**

#### **4.1 Conclusion**

The following conclusions are made based on the study made on the application of abuse of market dominance provisions on the cement market in Ethiopia.

There is a continuous abuse of market dominance in the cement market. The main acts of abuse of market dominance are manifested such as limiting the product of cement, amassing and hoarding cement products, using improper channels of distribution for the products, and imposing an unfair selling price, both directly and indirectly. There is a high price in the cement market. Discrimination practices among customers are observed in the cement market.

The above-mentioned forms of abuse of market dominance in the cement market greatly affected the construction sector directly and the livelihood of construction workers and their families indirectly. The impact of the abuse of market dominance in the cement industry on the nation's economy is undeniable.

There are practical problems on behalf of the trade competition and consumer protection authority in the process of enforcing the trade competition and consumer protection laws. There are gaps in the proclamation. The main gaps in the proclamation are first in the assessment of market dominance. In the assessment of market dominance provisions, very general terms and unclear words are used and are also highly open to subjective criteria. It is also ambiguous, whether it is used for exploitative types of abuse or not. Second, on the scope of application of the abuse of market dominance provisions, it is not clear whether they apply to the oligopolistic nature of the market or not. And thirdly, the absence of regulations and directives is one of the main gaps in the law that affects its effective enforcement. The authority failed to prepare effective regulations and directives to enforce the law in the cement market.

In addition to legal gaps, there are practical challenges in the enforcement of abuse of market dominance provisions in the cement market. Difficulty determining unfair selling and purchasing prices, incompatibility of demand and supply, abuse of information, the intervention of illegal

brokers, the absence of peace, and the oligopolistic nature of the cement market are the main practical challenges to effectively enforcing the provisions.

There are institutional and structural gaps to effectively enforce the provisions. The main problems in the institution are the limited number of human resources, the shortage of an adequate budget, and the autonomy and independence of the enforcing institution. The main factor determining the efficiency of the enforcing institution is the number and professional composition of its experts. The other challenge is being unable to monitor the capacity of production of the cement factories directly in the production areas because of the insecure location of the factories. The ministry is also unable to prepare effective tools to monitor and supervise the cement market. Inefficient market supervision was one of the shortcomings of the institution in the process of enforcing the abuse of market dominance provisions.

The other shortcoming of the MoTRI is that it does not fulfill its responsibility to organize education and training forums to enhance awareness. There is weak awareness creation about the abuse of market dominance by customers. There is no market research about abuse of market dominance in the cement market that has yet been conducted by the experts of the institution.

It has been concluded that there is abuse of dominance in the cement market. The abuse is a blatant abuse of dominance, and provisions are not enforced in the market. There are legal, practical, and institutional challenges to the enforcement of abuse of market dominance provisions in the cement market.

## **4.2 Recommendations**

In order to curb the abuse that exists in the cement market, the following recommendations are made.

- I recommend that the MoTRI initiate and the legislator amend the TCCPP to avoid the ambiguity of the provisions. This study focused on the abuse of market dominance provisions; those provisions necessitate amendments and a clear regulation in order to enforce the provisions. Among the amendments needing provision relevant (product and geographic) markets, application of abuse of market dominance; all the articles about assessment of market dominance and the establishment of the institution are given back to the independent legal autonomy from being under the MoTRI.

- In order to curb the incompatibility of demand and supply and the oligopolistic nature of the cement market, the FDRE Government, especially the MoTRI, should work on the method of increasing the cement product by solving the problems of the factories as best it can and encouraging the factories;
- The government should leave the market and allow it to run based on the principles of a free market economy and make the market competitive, and resolve the problem through the competition law.
- The MoTRI Competition Desks must be allotted enough budgets and enabled with adequate human resources and skilled manpower.
- The MoTRI must create awareness among the market players in the cement industry about abuse of dominance issues. This will decrease in some way the problem faced in the cement market.
- The MoTRI should investigate the market structure of the cement market, where anti-competitive trade practices are being conducted, and work to shorten the market chain of the system, identify the real problems and follow up on the distribution channel, starting from the factory up until it reaches the hands of consumers. Take strong corrective measures against the actors that are abusing the cement market.
- Currently, though the power and duties of the TCCPA are transferred to MoTRI by proclamation number 1263/2021 Art. 22(1)(o) and (q), 22(2), and 106(2), based on the findings of this study, the researcher recommends that the enforcing institution of the TCCPP be established as an autonomous and independent legal entity with structural, institutional, and professional independence. It must be accountable to the HPR, and their budget must also be allocated by the HPR. Because of the regulatory nature of their work, the institutions that enforce TCCPP must be free from MoTRI. Otherwise, it is difficult to achieve the goals and effectively enforce the proclamation.
- The academicians and researchers have to undertake further study on the economic, social, and political impact of abuse of market dominance in the cement market.

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1. Definition of Powers and Duties of the Executive Organs Proclamation Number 1263/2021,
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## **Interview**

1. Interview with Getinet Ashenafi, Head of anti-trade competitive and legal contravene prohibition desk of MoTRI, March 13, 2023
2. Interview with Yibeltal Yimer, prosecutor of anti-trade competitive and legal contravene prohibition desk of MoTRI, March 09, 2023
3. Interview with Seifu Ayele, Head of consumers rights protection and awareness creation at the value of goods study and regulation desk of MoTRI, March 09, 2023
4. Interview with Tesfaye Abu Head of value of basic goods study and distribution at the value of goods study and regulation desk of MoTRI ,March 22, 2023
5. Interview with Ashenafi Mamuye Expert of value of goods study and regulation desk of MoTRI March 22, 2023
6. Interview with Solomon Ayalew Presiding Judge of the Appellate tribunal of TCCP at the ministry of justice , May 16, 2023

## **Focused group discussion**

Focused group discussion with:

1. Kidanie Tsegaye, presiding Judge of the TCCP at the ministry of justice.
2. Mekides Mekuria, judge of the TCCP at the ministry of justice.

On May 16, 2023

Appendix –1

Table 1. Response of value of goods study and regulation experts and legal experts of the ministry of trade and regional integration nine value of goods study and regulation experts and six legal experts were responded by rating the level of the prevalent problems on the abuse of market dominance in the cement market.

No.	Prevalent problems	Level of the problem				
		V.high(5)	High (4)	Medium(3)	Low (2)	V. low(1)
1.	Limiting cement products	46.7%	40%	13.3%		
2.	Hoarding of cement products	40%	46.7%	13.3%		
3.	Amassment of cement products	33.3%	40%	26.7%		
4.	the cement product are distributed in the improper channel	53.33%	13.3%	13.3%	6.7%	13.3%
5.	a complaint by consumers on discriminatory acts between consumers	26.7%	40%	13.3%	13.3%	6.7%
6.	a complaint by customers on discriminatory matter between customers	40%	40%	13.3%	6.7%	
7.	Directly or indirectly imposing unfair selling price and purchase price	53.3%	40%	6.7%		
8.	Delayed Decision given for the complain of consumers and customers	33.3%	20%	13.3%	26.7%	6.7%
9.	Fluctuation of price on cement market	33.3%	46.7%	20%		
10.	The market supervisors are small	53.3%	33.3%	13.3%		

	to follow up the enforcement of the law at the market					
11.	The budget allocated for regular supervision in abuse of market dominance is not enough.	53.3%	33.3%	13.3%		
12.	There are no facilities to conduct the supervision of the market regularly.	46.7%	33.3%	13.3%	6.7%	
13.	The absence of clear autonomy to control the abuse of market dominance in the cement market.	46.7%	26.7%	26.7%		
14.	The absence of clear tools to enforce the abuse of market dominance in the cement market	13.3%	40%	33.3%	13.3%	
15.	Conducting action research on the abuse of cement market was inadequate.	40%	40%	13.3%	6.7%	
16.	There is weak awareness creation activity for stakeholders' about abuse of market dominance in the cement market.	46.7%	46.7%	6.7%		

*Source: Field Survey,2023*

**Appendix -2**

Table 2. Response of eleven respondents from construction companies.

No.	Prevalent problems	Level of the problem				
		V.high(5)	High (4)	Medium(3)	Low (2)	V. low(1)
1.	Limiting cement products	54.5%	18%	27%		
2.	Hoarding of cement products	64%	9%	18%		9%
3.	Amassment of cement products	54.5%	18%	27%		
4.	the cement product are distributed in the proper channel	27%	27%			45%
5.	Fluctuation of price on cement market	73%	27%			
6.	Follow up on the abuse of cement market was inadequate.	18%	45%	27%		9%
7.	There is weak awareness creation activity for stakeholders' about abuse of market dominance in the cement market.	27%	45%	18%	9%	

*Source: Field Survey,2023*

**Appendix 3****Document review on the production and sale of cement products**

Table 3.1		2010 Production and Sale(in Ton)	
No	Company Name	Production	Sale
1	Dangote Cement PLC	2,027,535.64	2,029,578.53
2	National Cement	1,084,208.00	1,087,191.36
3	Pioneer cement	8,505.23	8,492.25
4	Capital Cement	258,594.19	326,094.17
5	Messebo Cement	1,702,652.15	1,653,599.70
6	Derba Cement	1,266,110.00	1,517,028
7	Mugher Cement	991,042	996,024.00
8	Ture Cement	209,762.75	217,255.70
9	Dashen Cement	22,535.40	22,535.40
10	Inchini Bedrock	20,772.46	20,773.30
11	East Cement	151,139.83	238,772.40
12	Zhongshan Cement	86,710.44	108,765.28
13	Fenghuan Cement	13,992.64	13,992.64
14	Habesha Cement	376,060.90	395,590.20
15	Ethio Cement	199,168.00	195377.24
	<b>Total</b>	<b>8,418,789.63</b>	<b>8,831,070.17</b>

Table 3.2		2011 Production and Sale (in Ton)	
No	Company Name	Production	Sale
1	Dangote Cement PLC	2,033,854.14	2,035,984.34
2	National Cement	974,702.00	980,677.96
3	Pioneer cement	64,670.55	66,253.05
4	Capital Cement	209,416.28	189,411.28
5	Messebo Cement	1,628,330.93	1,514,796.50
6	Derba Cement	1,279,373.00	1,055,495
7	Mugher Cement	906,388	1,094,253.60
8	Ture Cement	77,343.10	78,158.85
9	Dashen Cement	21,671.45	21,641.45
10	Inchini Bedrock	6,643.50	6,643.50
11	East Cement	202,673.82	214,132.71
12	Zhongshan Cement	157,007.47	144,798.18
13	Fenghuan Cement	11,621.92	11,621.92
14	Habesha Cement	497,279.17	465,672.99
15	Ethio Cement	198,150.26	256449.82
	<b>Total</b>	<b>8,269,125.59</b>	<b>8,135,991.05</b>

Table 3.3		2012 EFY Production and Sale(in Ton)	
No	Company Name	Production	Dispatch
1	Dangote Cement PLC	2,020,862.36	2,117,731.52
2	National Cement	876,916	802,318.40
3	Pioneer cement	188,306.6	187,329.75
4	Capital Cement	242,184.84	241,747.20
5	Messebo Cement	1,759,323.38	1,912,153.62
6	Derba Cement	1,172,165.5	1,031,848
7	Mugher Cement	790,167	782,066.16

8	Dashen Cement	153,804.55	153,804.55
9	Inchini Bedrock	0	0.00
10	East Cement	286,794.10	255,102.34
11	Zhongshan Cement	187,399	171,362.15
12	Fenghuan Cement	485	485.00
13	Habesha Cement	330,674.66	350,597.22
14	Ethio Cement	328,230.98	335159.472
15	Kuyu Cement	72,520	73,895.5
	<b>Total</b>	<b>8,409,833.97</b>	<b>8,415,600.88</b>

		2013 EFY Production and Sale (in Ton)	
No	Company Name	Production	Dispatch
1	Dangote Cement PLC	2,098,776.08	2,124,355.46
2	National Cement	1,257,607.56	1,249,474.32
3	Pioneer cement	323,785.87	312,771.21
4	Capital Cement	76,778.99	77,038.49
5	Messebo Cement	615,137.34	577,748.22
6	Derba Cement	1,057,477.48	1,236,699.60
7	Mugher Cement	804,848.84	832,588.54
8	Dashen Cement	-	-
9	Inchini Bedrock	-	-
10	East Cement	315,534.56	245,438.00
11	Zhongshan Cement	108,981.00	108,940.50
12	Fenghuan Cement	-	-
13	Habesha Cement	497,547.00	500,385.20
14	Ethio Cement	376,921.00	358,154.50
15	Kuyu Cement	101,069.00	103,456.80

	<b>Total</b>	7,634,464.72	7,727,050.84
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Table 3.5

<b>2014 Cement Production and Dispatch(in Ton)</b>			
<b>No</b>	<b>Name of Industries</b>	<b>Cement Production/Year</b>	<b>Cement Sale/Year</b>
1	<b>Dangotie Cement</b>	2,389,233.32	2391152.63
2	<b>National Cement</b>	1,185,111	1185280.82
3	<b>Pioneer Cement</b>	27,005,152	296271.9
4	<b>Capital Cement</b>	69,810.9	69,810.90
5	<b>Derba Cement</b>	809,959.00	265931
6	<b>Mugher Cement</b>	673,278.06	677413.98
7	<b>Dashen Cement</b>	162,576.20	162576.2
8	<b>East Cement</b>	264,184.8	267545.8
9	<b>Zhongshan Cement</b>	59,647	58696
10	<b>Habesha Cement</b>	190,677	188,826.00
11	<b>Ethio Cement</b>	190,659.41	162109.78
12	<b>Kuyu Cement</b>	59,525.8	59585.6
<b>Total</b>		<b>6,324,714.01</b>	<b>5,785,200.61</b>

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The following questions are presented for the legal experts of MoTRI's anti-trade competitive and legal contravene prohibition desk in order to evaluate the legal and practical challenges. The experts are expected to rate the prevalent problems suggested about the organization in the process of enforcing the competition law of Ethiopia on the cement market.

I. Respondent general information:-

Sex-----

Education qualification -----

Occupation level-----

Work experience -----

II. Specific questions –Give clear and short answer for the following questions accordingly

**1. Part One**

1. Are the provisions of abuse of market dominance adequate to enforce on the cement market?

Yes                      b) No

2. Are the provisions on abuse of market dominance sufficient in order to curb abuse of market dominance in the cement market?

a) Yes                      b) No

3. If the answers to questions 1 and 2 are "no," what problems did you encounter?.....

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## 2. Part Two

Mark the level of the problems on the Likert scale indicated on the table as "very high, "high, "medium, "low," and "very low.

No	Prevalent problems of the organization	Level of the problems				
		Very high	High	Medium	Low	Very low
1	Limiting cement products					
2	Hoarding of cement products					
3	Amassment of cement products					
4	the cement product are distributed in the improper channel					
5	a complaint by consumers on discriminatory acts between consumers					
6	a complaint by customers on discriminatory matter between customers					
7	Directly or indirectly imposing unfair selling price and purchase price					
8	Delayed Decision given for the complain of consumers and customers					
9	Fluctuation of price on cement market					
10	The market supervisors are small to follow up the enforcement of the law at the market					
11	The budget allocated for regular supervision in abuse of market dominance is not enough.					
12	There are no facilities to conduct the supervision of the market regularly.					
13	The absence of clear autonomy to control					

	the abuse of market dominance in the cement market.					
14	The absence of clear tools to enforce the abuse of market dominance in the cement market					
15	Conducting action research on the abuse of cement market was inadequate.					
16	There is weak awareness creation activity for stakeholders' about abuse of market dominance in the cement market.					

**3. Part Three**

**Open ended questions**

1. What other problems do you encounter with the enforcement of abuse of market dominance provisions in the cement market?

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2. What do you think are possible solutions to enforce market dominance provisions in the cement market?.....

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**Thank you for your genuine answers!**

**Addis Ababa University**  
**School of law**

The following questions are presented for MoTRI, the value of goods study, and regulation desk experts: The questions are prepared to assess the legal and practical challenges facing the ministry in enforcing market dominance in the cement market. The experts are expected to rate the prevalent problems suggested about the organization in the process of enforcing the competition law of Ethiopia on the cement market.

I. Respondent general information:-

- Sex-----
- Education qualification -----
- Occupation -----
- Level-----
- Work experience -----

II. Specific questions –Give clear and short answer for the following questions.

**1. Part One**

**Mark the level of the problems on the Likert scale indicated on the table as "very high, "high, "medium, "low," and "very low.**

No	Prevalent problems of the organization	Level of the problems				
		<b>Very high</b>	<b>High</b>	<b>Medium</b>	<b>Low</b>	<b>Very low</b>
1	Limiting cement products					
2	Hoarding of cement products					
3	Amassment of cement products					
4	the cement product are distributed in the proper channel					
5	a complaint by consumers on discriminatory acts between consumers					

6	a complaint by customers on discriminatory matter between customers					
7	Directly or indirectly imposing unfair selling price and purchase price					
8	Delayed Decision given for the complain of consumers and customers					
9	Fluctuation of price on cement market					
10	The market supervisors are small to follow up the enforcement of the law at the market					
11	The budget allocated for regular supervision in abuse of market dominance is not enough.					
12	There are no facilities to conduct the supervision of the market regularly.					
13	The absence of clear autonomy to control the abuse of market dominance in the cement market.					
14	The absence of clear tools to enforce the abuse of market dominance in the cement market					
15	Conducting action research on the abuse of cement market was inadequate.					
16	There is weak awareness creation activity for stakeholders' about abuse of market dominance in the cement market.					

**2. Part Two**

**Open ended questions**

1. How do you control the illegal acts on the cement market?.....

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2. What other problems do you encounter on the cement market regarding to abuse of market dominance?.....

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3. What do you think are possible solutions to the problems that encounter the cement market regarding abuse of market dominance?.....

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**Thank you for your genuine answers!**

**Addis Ababa University**

**School of law**

The following questions are presented for construction companies: The main objectives of this questionnaire are to collect relevant data for the partial fulfillment of an LLM on the title of assessing the enforcement of abuse of market dominance provisions in the cement market and to forward a possible solution.

I. Respondent general information:-

Sex-----

Name of your organization-----

Education qualification -----

Occupation level-----

Work experience -----

II. Specific questions –Give clear and short answer for the following questions accordingly.

**Part One**

**Mark the level of the problems on the Likert scale indicated on the table as "very high, "high, "medium, "low," and "very low.**

No.	Prevalent problems	Level of the problem				
		V. high	High	Medium	Low	V. low
1.	Limiting cement products					
2.	Hoarding of cement products					
3.	Amassment of cement products					
4.	the cement product are distributed in the proper channel					
5.	Fluctuation of price on cement market					
6	Follow up on the abuse of cement market was inadequate.					
7	There is weak awareness creation					

	activity for stakeholders' about abuse of market dominance in the cement market.					
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**Part two**

**Open ended questions**

1. Do you believe that the measures taken by the government are the solution to the problem in the cement market?.....  
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2. If there is an additional problem you have noticed in the cement market, If your answer is yes, please mention.....  
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3. What do you think should be done in order to effectively curb the problem of abuse in the cement market?.....  
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**Addis Ababa University**  
**School of law**  
**Semi-Structured interview**  
**for**

**The heads and senior experts of the Ministry of Trade and Regional Integration, value of goods study, and regulation desk**

1. Do you think there is a problem of abuse in the cement market?.....  
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2. What are the major challenges you encountered during the time of supervision and inspection in the cement market? .....  
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3. What are the challenges in the value of goods study and regulation desk to curb the abuse in the cement market ?.....  
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4. What are the main challenges for the MoTRI to control the abuse of market dominance in the cement market?.....  
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5. In light of the trade competition and consumer protection proclamation mandated obligations, how would you evaluate the TCCP authority inclusion under the ministry of trade and regional integration? .....  
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6. What do you think should be done in order to effectively curb the problem of abuse in the cement market?.....  
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**Thank you for your genuine cooperation!**

**Addis Ababa University**  
**School of law**  
**Semi-Structured interview**  
**For**

**The head and senior expert of the Ministry of Trade and Regional Integration, anti-trade  
competitive and legal contravene desk**

1. Is there a legal gap in the abuse of market dominance provisions of the trade competition and consumer protection proclamation? .....
2. Is the abuse of market dominance provision adequate to be enforced in the cement market? .....
3. Is awareness creation done for consumers about the organization's role in Preventing abuse of market dominance? .....

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4. What are the challenges in the anti-competitive and legal contravene prohibition desk to curb the abuse in the cement market?.....  
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5. Is the number of human resources in the organization sufficient to regulate and investigate abuse of dominance in the cement market?.....  
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6. In light of the trade competition and consumer protection proclamation mandated obligations, how would you evaluate the TCCP authority inclusion under the ministry of trade and regional integration?.....  
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7. What do you think should be done in order to effectively curb the problem of abuse in the cement market? .....  
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