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Competition Law Enforcement in Informal Markets – Contribution from BIAC

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Mr Antonio Capobianco [Antonio.Capobianco@oecd.org]

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Competition Law Enforcement in Informal Markets

- Contribution from BIAC –

1. Introduction

1. *Business at OECD* (BIAC) appreciates the opportunity to provide its views to the OECD Global Forum on Competition for the roundtable discussion on Competition Law Enforcement in Informal Markets.

2. As the number of effective competition regimes and levels of enforcement across the globe continue to increase, it is important for competition authorities to give proper consideration to the role that informal markets have on competitive dynamics. This is particularly so in developing jurisdictions which have a clearer divide between “formal” and “informal” market segments.

3. This submission will provide BIAC’s views on the practical difficulties in monitoring and considering the competitive constraint that informal markets may have against formal markets. BIAC emphasizes, however, that the monitoring and enforcement of competition within informal markets are highly dependent on the particular jurisdiction as well as the relevant market in question.

4. Globally, informal economies have represented a significant portion of economic activity, especially in emerging markets, where the “shadow” economy averaged around 31.9% of GDP across 158 countries between 1991 and 2015.¹

5. A study conducted in South Africa found that eight out of ten businesses operating in the township sector are unregistered as a result of bureaucracy and complex relationships with banks. These businesses operate predominantly from residential dwellings or the streets as a means to minimize operational costs.² This substantial presence underscores the importance of considering informal markets in competition policy discussions going forward.

6. BIAC submits it is vital that equitable enforcement of antitrust law occurs across both formal and informal markets.

¹ Leandro Medina & Friedrich Schneider, *Shadow Economies Around the World: What Did We Learn Over the Last 25 Years?* 23 (IMF Working Paper No. WP/18/17, 2018), <https://www.imf.org/-/media/Files/Publications/WP/2018/wp1817.ashx>.

² Khumalo Kabelo, *Standard Bank Study Reveals Eight Out of 10 Township Businesses Unregistered*, *BusinessDay* (Oct. 15, 2025), <https://www.businessday.co.za/bd/economy/2025-10-15-standard-bank-study-reveals-eight-out-of-10-township-businesses-unregistered/>.

2. Distinguishing Between “Formal” and “Informal”

7. There does not appear to be a settled definition of what constitutes an informal market, nor does there appear to be a clear distinction between the formal and informal markets.³ This conceptual fragmentation is a persistent issue, with the literature and statistical frameworks using diverse criteria depending on varying research and policy motivations. Terms such as “shadow economy,” “underground economy,” or “hidden economy” are often applied interchangeably to a similar scope of production or employment, further complicating competition agencies’ ability to reach a clear distinction.⁴

8. The complexities in defining informal markets stem from varying research and policy perspectives. Informal and formal markets exist on a spectrum, with blurred boundaries influenced by social norms and institutional contexts.⁵ This inability to clearly define a relevant market that distinguishes between formal and informal markets complicates data collection, analysis, and enforcement strategies for competition authorities.

9. However, for purposes of this submission, BIAC defers to the International Labour Organization’s (ILO) definition of “informal economy” as noted in the OECD’s Call for Contributions, specifically:

*all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements. Their activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which means that – although they are operating within the formal reach of the law, the law is not applied or not enforced; or the law discourages compliance because it is inappropriate, burdensome, or imposes excessive costs.*⁶

10. The above definition is designed for policy analysis relying upon the informal sector and informal employment. The informal sector includes household unincorporated enterprises with low levels of organization, without a separate legal entity, and engage in market production—meaning it produces goods or services explicitly for sale in the market—which contributes to the broader economy. Informal employment encompasses those jobs that are not subject to national labor legislations, income taxation, social

³ OECD, The Informal Economy in Latin America and the Caribbean: Implications for Competition Policy – Background Note, DAF/COMP/LACF(2018)4, ¶¶ 5-7 (Apr. 1, 2019), https://www.oecd.org/content/dam/oecd/en/publications/reports/2018/09/the-informal-economy-in-latin-america-and-the-caribbean-implications-for-competition-policy_7dcce8e2/6c1eb867-en.pdf [hereinafter OECD 2018].

⁴ Int’l Monetary Fund, Measuring the Informal Economy 1 (IMF Policy Paper No. 2021/002, 2021), <https://doi.org/10.5089/9781513568249.007> [hereinafter IMF Policy Paper No. 2021/002].

⁵ Ioana Alexandra Horodnic, Claudia Ioana Ciobanu, Adriana Zait & Colin C. Williams, Who Purchases from the Informal Economy and Why?, 13 *Frontiers Psych.* 940076 (2022), available at <https://www.frontiersin.org/journals/psychology/articles/10.3389/fpsyg.2022.940076/full>.

⁶ OECD, Competition Law Enforcement in Informal Markets – Call for Country Contributions, DAF/COMP/GF(2025)2, at 2 (Aug. 12, 2025), [https://one.oecd.org/document/DAF/COMP/GF\(2025\)2/en/pdf](https://one.oecd.org/document/DAF/COMP/GF(2025)2/en/pdf).

protection, or do not provide certain mandated employment benefits, regardless of whether the employer is classified as operating in the formal or informal sector.⁷

11. A key characteristic of informal sector units – meaning individual businesses or enterprises – is that they generally fall outside the scope of regular statistical inquiries and data collection systems because they are unregistered or seek to avoid detection.⁸ This makes them part of the broader informal economy, which includes those activities missed due to deficiencies in data collection programs.⁹ Consequently, a lack of reliable and official statistical data on the size, output, and employment of a market segment is a strong indicator of the level at which firms within the informal economy operate. As will be discussed in more detail throughout this submission, BIAAC means to ensure data availability to assist in accurately defining relevant markets in order for business and authorities to have a full understanding of the competitive constraints imposed by those firms operating outside the ambit of the formal market economy.

12. While all countries have an informal economy, a substantial part of the Gross Domestic Product (GDP) of developing countries is made up by that country’s informal economy.¹⁰ The impact of this is predominantly identified within developing countries, as the relative rate of expansion generally exceeds that of developed economies.¹¹ An example of this can be found in Kenya, where 83% of the Kenyan population operate within the country’s informal economy contributing 24% to Kenya’s GDP.¹²

13. Informal markets place competitive pressure on firms operating within formal market economies through, for example, the national importance an informal market has within a national context for a developing economy.

14. Informal markets should be given consideration by competition law authorities in at least three situations:

- Given the importance of a country’s informal economy to its broader population, it is important to mitigate against anticompetitive conduct even at the informal market level;
- Informal markets are affected by the anticompetitive conduct of firms in the formal market; and
- Determination of relevant markets and market power for merger and abuse of dominance cases.¹³

⁷ IMF Policy Paper No. 2021/002, supra note 4, ¶ 33.

⁸ Siddhartha Mitra, Informal Sector and Competition: A Comprehensive Agenda for Research and Action 2 (CUTS Discussion Paper No. 1/2009, 2009), https://cuts-ccier.org/wp-content/uploads/2019/01/Informal_Sector_and_Competition-A_Comprehensive_Agenda_for_Research_and_Action.pdf.

⁹ IMF Policy Paper No. 2021/002, supra note 4, ¶ 56.

¹⁰ OECD, Competition Policy and the Informal Economy, DAF/COMP/GF(2009)10, at 11 (Mar. 3, 2010), https://www.oecd.org/content/dam/oecd/en/publications/reports/2010/03/competition-policy-and-the-informal-economy_9efc3c1b/512c20f6-en.pdf [hereinafter OECD 2009].

¹¹ Gillian Hinde, How the Sustainable Growth of Emerging Markets Hinges on the Informal Economy, World Econ. F. (Oct. 15, 2024), <https://www.weforum.org/stories/2024/10/sustainable-growth-emerging-markets-informal-economy/>.

¹² Id.

¹³ OECD 2018, supra note 3, ¶ 48.

15. It has been observed that a firm operating within the informal markets can exercise competitive constraint against its formal counterparts. Players operating within informal markets may obtain pricing advantages as a result of their avoidance of taxes and regulations, to the detriment of firms operating lawfully.¹⁴ This allows firms in the informal market to undercut rivals and deter consumers away from wielding purchasing power across formal markets. An unregulated market presents its own challenges to both consumers and competitors. Importantly, even players within formal markets need to be able to understand which mechanisms are available to hold anticompetitive conduct in the informal sector to account to ensure that there is fair competition.

16. One example is the Brookside Dairy Limited acquisition of Buzeki Dairy Limited approved by the Competition Authority of Kenya (CAK) in 2013.¹⁵

- In *Brookside*, the CAK found that Kenya’s annual milk production is approximately 4.1 billion liters. Kenya has one of the highest levels of per capita milk consumption in Africa, driven by a strong cultural preference for tea which is often made with large quantities of milk and the nutritional importance of dairy, particularly for rural households. A typical feature of the market is the small-scale, often zero-grazing, production model, where a vast number of smallholder farmers own a few cows.
- Of the total production, 48% is consumed by the producing households themselves, reflecting the subsistence nature of a significant portion of dairy farming. The remaining 52% is sold through both formal and informal channels. Consequently, the CAK defined the relevant product market as the market for milk sold commercially. This market milk includes both processed and unprocessed milk, which were deemed to be substitutable. A key characteristic of Kenyan consumption habits is the high consumer acceptance of raw milk, which is often purchased directly from farmers or local milk bars due to its lower price and perceived freshness, making it a strong competitive constraint on processed, packaged milk. Hence, the relevant product market was defined as the market for commercial milk, through formal and informal channels.
- In this case, the CAK’s market definition considered the prevalence of customers switching from processed to unprocessed milk. In this regard, a 16% VAT imposed on processed milk in 2013 was considered in the application of a SSNIP test. The CAK found milk sales for all processors had declined for fresh and long-life milk after the implementation of the VAT, which the CAK understood to imply that raw milk, sold through informal channels such as direct sales from farmers, local milk bars, and by mobile vendors, was easily substitutable with processed milk. The CAK, therefore, found that the relevant product market was broader than the processed milk market alone. It further found that registered milk processing firms face stiff competition from the informal sector through the existence of mini-industries, cottage industries, milk bars, producers, dairy co-operatives and informal traders.

¹⁴ Diana Farrell, *The Hidden Dangers of the Informal Economy*, 3 *McKinsey Q.* 27 (2004), available at <https://www.mckinsey.com/featured-insights/employment-and-growth/the-hidden-dangers-of-the-informal-economy>.

¹⁵ Competition Auth. Kenya, *Annual Report 2013/2014*, at 21, <https://www.cak.go.ke/arch/sites/default/files/annual-reports/FY%202013-2014%20CAK%20Annual%20Report.pdf>.

17. Another example can be seen through the investigation into Gloria S.A. for alleged anticompetitive practices in the Peruvian dairy market. In November 2007, the Peruvian Milk Farmers Association (AGALEP) and the National Fund of Dairy Farming (FONGAL Lima) filed a complaint with the Peruvian Competition Authority against Gloria S.A., the country's largest dairy company, alleging an abuse of dominance. The Peruvian National Institute for the Defense of Free Competition and the Protection of Intellectual Property (Indecopi) dismissed the case, however, the debate around abusive pricing and its impact on economic and social welfare persisted.

- The structure of the Peruvian dairy market fueled this debate as the industry had long been concentrated among just three firms, each sourcing raw milk primarily from distinct geographic regions where incumbents received supply from numerous small-scale, family-run suppliers which individually contributed nominal amounts towards the volumes raw milk produced within the specific region. It is assumed then, that these small-scale, family-run suppliers form part of the informal market. This raised concerns about the exercise of buyer power in the sector.
- In 2008, the Free Competition Commission¹⁶ formally rejected the claims as a matter of law, holding that the alleged conduct related to exploitative pricing (excessively low prices), a practice not prohibited under Peruvian competition law. The Competition Tribunal upheld this decision in 2011. Hence, substantive competition law did not ensure adequate protection for smaller firms, arguably active within informal markets.
- The final investigation report concluded that the issues identified stemmed largely from the fragmented nature of raw milk production, inefficiencies in production, and the limited bargaining power of suppliers.¹⁷

18. Accordingly, BIAC respectfully submits that to ensure effective and proportionate enforcement across all players in the market, it is appropriate and necessary for competition authorities to consider the role of informal markets when defining relevant markets for purposes of merger control and abuse of dominance cases. In those instances, where informal markets exist but are not properly considered, the firm(s) under investigation by a competition authority may be found to have an artificially inflated market share which does not reflect market realities, risking the imposition of unfair and/or disproportionate penalties.

19. A more balanced set of policy recommendations may require explicit consideration of the unintended consequences of increased enforcement, such as the risk of driving economic activity further underground, raising costs for vulnerable consumers dependent on the informal sector, or displacing livelihoods if the formal economy cannot absorb the affected labor.

20. While BIAC advocates for the equitable enforcement of competition law in informal markets, it is crucial to acknowledge potential unintended consequences. A nuanced approach is necessary to ensure enforcement does not inadvertently harm the populations it aims to protect. Aggressive enforcement could drive informal activity further underground, exacerbating data gaps and insecurity for workers. Furthermore, by

¹⁶ The Free Competition Commission is a branch of INDECOPI, which is a public agency in charge of the promotion of competition in the marketplace.

¹⁷ Tilsa Oré Mónago & José A Tavera, *Milking the Milkers: A Study on Buyer Power in the Dairy Market of Peru*, at 3 n.6 (PUCP Working Paper No. 470, 2018), <https://repositorio.pucp.edu.pe/server/api/core/bitstreams/55bf2b8b-49e2-4829-97a2-8d17541d728d/content>.

potentially raising costs for informal operators, enforcement might eliminate the low-price options upon which the most vulnerable consumers rely. There is also a risk to livelihoods if the formal sector lacks the capacity to absorb a displaced labor. Therefore, BIAC submits that enforcement should be coupled with broader initiatives to facilitate formalization, ensuring policy promotes fair competition without undermining economic participation or consumer welfare.

21. Moreover, in *Gloria*, the authority focused on how dominant firms can have an effect on informal suppliers within a well-defined sales market. Axiomatically, proper and equitable enforcement of competition law is important to ensure that firms in either the formal or informal markets are not unduly prejudiced.

3. Data as a Key Barrier in Monitoring and Enforcement in Informal Markets

22. Access to reliable data is key for any competition law enforcement and for firms operating in the formal sector when making strategic decisions. Data issues make regular appearances in many empirical studies. This is particularly true with respect to data collection or analysis with regard to informal markets or the firms that operate with informal markets.¹⁸

23. The difficulty in accessing data is exacerbated by players within informal markets that intentionally remain undetected by official data collection systems. This deliberate concealment means firms often avoid keeping formal accounts, rely on cash transactions, and operate within fragmented, mobile networks, making it difficult for authorities to serve legal notices or collect meaningful evidence.

24. Most informal economic activity is not captured within national accounts data.¹⁹ The difficulty that exists in accessing data is further exacerbated by the players within informal markets that are intentional about remaining undetected by national or industry data collection.²⁰ The effort to determine the true size of an informal market within an economy entails obtaining data directly from those firms or customers that operate within the informal sector or indirectly through alternative data sources that imply operations and conduct within the informal economy.²¹

25. The existence of these data gaps poses significant challenges for competition authorities. Without reliable information, it is difficult to accurately define a relevant market, calculate market shares, and by extension, measure the extent of anti-competitive harm. For example, informal markets are said to be substantial in size – accounting for between 30-70% of GDP in a developing economy – yet these figures remain largely unaccounted for within official records.²² This lack of visibility undermines the ability of authorities to monitor market dynamics and design effective enforcement strategies. It further undermines the ability of business to make strategic decisions that involve a portion of the economy that operates on a largely undocumented basis.

¹⁸ OECD 2009, *supra* note 10, at 26.

¹⁹ *Id.*

²⁰ Medina & Schneider, *supra* note 1, at 4.

²¹ OECD 2009, *supra* note 10, at 26.

²² *Id.* at 11-12.

26. The deliberate concealment of activity by informal actors creates obstacles where firms avoid keeping formal accounts, rely solely on cash transactions, and/or operate within a fragmented and highly mobile network. As the OECD noted, competition authorities often find it difficult to serve legal notices or collect meaningful evidence when dealing with informal operators, as these entities lack identifiable assets or could re-establish themselves under a different guise if pursued for anticompetitive conduct.²³ For example:

- In Peru, the competition authority has acknowledged that informal actors are pervasive in sectors such as transportation and retail, making it extremely challenging to measure market concentration or prove instances of collusion. This means that formal businesses risk facing a loss of customers to cheaper informal rivals who bypass regulatory costs, while also struggling with an inability to prove anticompetitive conduct, since market concentration and collusion are nearly impossible to measure accurately. To overcome this, authorities have relied on indirect methods such as surveys and upstream data from suppliers, although such evidence is often incomplete and contested.²⁴
- Similarly, in Mexico, enforcement against informal distributors in the gas sector required innovative use of commission agents and alternative data collection methods to estimate market impact, since many operators had no formal registration or tax records.²⁵ The effect of this is that there is a potential for formal operators to encounter unfair price competition from unregistered distributors, which potentially undermines investment and compliance incentives, while the absence of reliable records makes it difficult to allege or substantiate collusion or exclusionary practices.
- In Kenya, studies of the informal milk market revealed that almost all small-scale traders operate outside formal regulatory frameworks forcing the CAK to rely on household consumption surveys and stakeholder interviews to estimate the scope of the market.²⁶ This unregulated and informal activity creates an enforcement vacuum, leaving formal firms with little recourse to challenge unfair or unsafe practices.

27. To address these barriers, authorities often resort to indirect measurement tools such as labor market statistics, electricity consumption patterns, or currency demand models to approximate the size of the informal economy.²⁷ These methods have provided some insight previously but are costly, time-consuming, and prone to estimation errors. The enforcement of competition policy in informal markets requires not only traditional investigative techniques but also broader institutional cooperation and innovative data-gathering strategies.

28. By improving the measurement of informal markets through tools such as labor statistics, electricity consumption, or currency demand models, authorities would create greater transparency around the true size and scope of competition. This would help level the playing field by reducing the unfair advantages that informal operators enjoy, such as

²³ Id. at 14.

²⁴ OECD 2018, *supra* note 3, at 24-25.

²⁵ Id. at 23.

²⁶ OECD 2009, *supra* note 10, at 138-139.

²⁷ OECD 2018, *supra* note 3, ¶ 12.

tax evasion or avoiding regulatory compliance, which often allow them to undercut formal businesses.

29. For formal firms, this means better protection of their market share as enforcement agencies would be better equipped to allege and prove anticompetitive conduct that currently goes undetected. In addition, greater insight into the informal economy would provide all players within the market with a clearer understanding of the dynamics at play, enabling more informed investment and strategic decisions. While it would not eliminate the informal sector altogether, addressing these barriers would make the market fairer, more competitive, and more accountable, ultimately strengthening the position of formal businesses.

4. Market Studies as a Direct Data Gathering Tool

30. While BIAC has previously raised specific concerns regarding the extended powers given to competition authorities during market studies and investigations (e.g., competition authorities being able to impose remedies absent any legal infringement as a result of powers extended by market studies), market studies nevertheless can remain a useful tool in assessing and understanding the competitive dynamics of a particular market.²⁸ Importantly, market studies have been successfully utilized to gather data directly from firms and customers in informal markets.

31. In South Africa, the South African Competition Commission (SACC) conducted a Grocery Retail Market Inquiry, which engaged extensively with participants operating in South Africa's informal retail market.²⁹ The approach of the SACC involved consulting with various small business associations that acted as intermediaries, facilitating group engagement with their members rather than requiring the SACC to conduct numerous individual interviews.³⁰ The SACC conducted a survey of small and independent retailers operating in South Africa's townships, peri-urban and rural areas to assess the dynamics of competition between South African and foreign owned spaza shops.³¹ Through the investigations into the retail market within South Africa, the SACC obtained data through conducting consumer surveys in order to understand how shopping patterns and preferences differ between South African and foreign owned spaza shops.³²

²⁸ OECD, Market Studies, DAF/COMP(2008)34, at 197-205 (Nov. 21, 2008), https://www.oecd.org/content/dam/oecd/en/publications/reports/2008/11/market-studies_3fd0bf50/c73ca194-en.pdf; OECD, The Role of Market Studies as a Tool to Promote Competition – Contribution from BIAC, DAF/COMP/GF/WD(2016)79 (Nov. 17, 2016), [https://one.oecd.org/document/DAF/COMP/GF/WD\(2016\)79/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2016)79/en/pdf); OECD, Methodologies for Conducting Market Studies – Note by BIAC, DAF/COMP/WP3/WD(2017)28 (June 8, 2017), [https://one.oecd.org/document/DAF/COMP/WP3/WD\(2017\)28/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)28/en/pdf); OECD, Using Market Studies to Tackle Emerging Competition Issues – Contribution from BIAC, DAF/COMP/GF/WD(2020)53, (Nov. 26, 2020), [https://one.oecd.org/document/DAF/COMP/GF/WD\(2020\)53/en/pdf](https://one.oecd.org/document/DAF/COMP/GF/WD(2020)53/en/pdf).

²⁹ Competition Comm'n of S. Afr., The Grocery Retail Market Inquiry: Final Report ¶ 357, <https://www.compcom.co.za/wp-content/uploads/2019/12/GRMI-Non-Confidential-Report.pdf> [hereinafter SACC Grocery Report].

³⁰ Id. ¶ 357.

³¹ Id. ¶ 358.

³² Id. ¶ 360.

32. Despite the SACC’s efforts to have meetings and perform surveys regarding the informal market, it still cited evidence gathering as “[o]ne of the major obstacles” of the Grocery Retail Market Inquiry.³³ Nevertheless, the SACC’s Retail Market Inquiry provided practical guidance on how competition authorities can go about understanding the dynamics of the informal markets of their particular jurisdiction.

33. BIAC respectfully submits that, properly utilized, market studies are an effective tool for competition authorities to gather data which can be used to assist business in understanding the impact that the informal sector has on their competitiveness within a market and in relation to consumer offerings.

5. Promoting Advocacy Initiatives

34. The maturity of competition law and competition law enforcement for many developing countries is still in its infancy.³⁴ This has the concomitant effect that many firms in those developing countries (which axiomatically have a larger proportion of informal markets) are not aware that they may be engaging in anticompetitive conduct. Conversely, firms are often not aware that they may be victims of anticompetitive conduct from firms in either the formal or informal segments.³⁵

35. Accordingly, BIAC respectfully submits that for competition authorities to be able to effectively promote and enforce competition law within informal markets, greater effort must be made in educating players within the informal market about competition law and the recourse available to market participants. This challenge is compounded by the significant disparity in the size and resources of competition authorities in developing countries. In this regard, many competition authorities across Africa have fewer than 10 staff and limited budgets.³⁶ The GSMA offers a capacity building course on “Competition Policy in the Digital Age” available to policymakers and regulators for free and certified

³³ Id. ¶ 361.

³⁴ See, e.g., Daniel Schwarz, *The Internationalization of Competition Law in Africa*, *Competition Pol’y Int’l* (Aug. 29, 2017), <https://www.pymnts.com/cpi-posts/the-internationalization-of-competition-law-in-africa/>.

Competition law regimes are now widespread and increasingly developed across Africa. They typically have merger control reviews and investigate cartels and other anticompetitive agreements. This can be illustrated by statistics recently compiled by the World Bank, in partnership with the African Competition Forum (ACF). The number of jurisdictions with competition regimes has rapidly expanded from 13 in 2000 to more than 30 in 2017, reflecting the growing role of competition policy on the development agenda. (emphasis added)

³⁵ The SACC in its Grocery Retail Market Inquiry aptly stated that a common challenge for competition authorities engaging with the informal sector – critical lack of awareness and trust. As the SACC’s Retail Market Inquiry found, efforts to gather evidence can be severely hindered by poor participation, often stemming from a fundamental lack of understanding of the commission’s role. Unlike large, formal businesses with legal counsel, small informal operators are frequently unaware of the authority’s existence or mandate. This can lead to misconceptions (that the authority is offering financial aid) and requires authorities to dedicate considerable time and resources simply to explaining their purpose and securing cooperation, a significant hurdle for any market study. SACC Grocery Report, *supra* note 29, ¶ 362 (emphasis added).

³⁶ Reda Cherif et al, *Competition, Competitiveness and Growth in Sub-Saharan Africa* (IMF Working Paper No. WP/20/30, 2020), <https://www.elibrary.imf.org/view/journals/001/2020/030/article-A001-en.xml>.

by the United Kingdom Telecoms Academy and accredited for Continuing Professional Development (CPD).³⁷

36. Advocacy and capacity building are therefore identified as a primary function of networks and regional competition authorities. For example, the COMESA Competition Commission (CCC) provides extensive training and capacity-building programs for its member states, which are essential for harmonizing enforcement approaches and building a regionally integrated and effective competition culture.³⁸

37. Tailored educational programs, simplified guidance materials in local languages, and partnerships with local business associations are essential to bridge the knowledge gap and build trust with informal market participants, ensuring they understands the role of the competition authority not as a financial benefactor but as a market referee.³⁹

6. Equality of Enforcement

38. There is need to ensure that enforcement of competition in informal markets must be equitable to enforcement within formal markets. This is particularly so when considering that informal markets are imperative to broader economic participation and employment across many developing economies, often serving as the primary interface between consumers and essential goods and services. In this regard, limited competition enforcement in informal markets risks over enforcement and unintended consequences in the formal sector.

39. Ensuring equality in enforcement promotes fairness and efficiency and further incentivizes increased formalization and responsible business conduct within the informal market. For those businesses active in both sectors, consistent and equitable enforcement is essential in driving innovation across markets, protecting consumer welfare, and supporting inclusive economic growth.

7. Concluding Comments

40. BIAC respectfully submits that informal markets must be properly considered for purposes of competition law enforcement. This is to ensure that relevant markets are not too narrowly defined, to the prejudice of a particular incumbent(s), or that the potential effects of activities within the formal sector on the informal sector are not given enough consideration in antitrust assessments.

41. Nevertheless, BIAC appreciates that data gathering and engaging with firms in informal markets remains a persistent challenge. In this regard, direct and indirect data gathering tools and exercises may assist competition authorities in gaining a better understanding of competitive dynamics in informal markets. Market studies allow competition authorities to engage directly with firms across the value chain, formal and informal, to understand these competitive dynamics while also serving as a powerful advocacy tool to promote awareness of competition law to players within the informal segment.

³⁷ Competition Policy in the Digital Age, GSMA, <https://www.gsmatraining.com/course/competition-policy-in-the-digital-age/>.

³⁸ Schwartz, *supra* note 34.

³⁹ *Id.*

42. BIAC emphasizes the importance of equitability in enforcement by competition authorities between firms operating in the formal and informal markets. Equitable enforcement promotes fairness while encouraging higher levels of formalization and responsible corporate behavior.