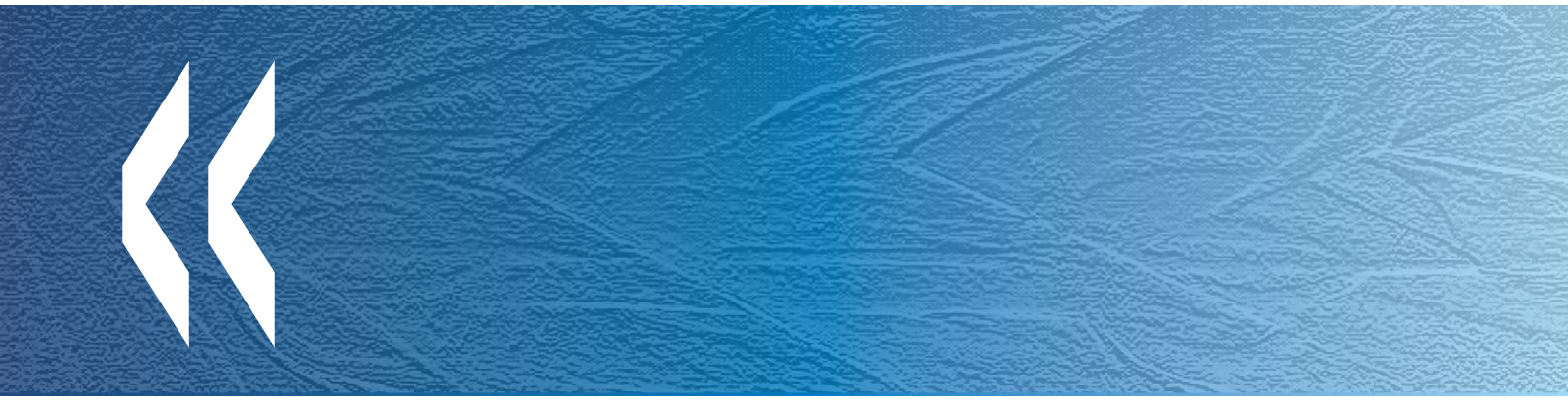
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FOREWORD

This document comprises proceedings in the original languages of a Roundtable on Competition Policy and the Informal Economy held by the Global Forum on Competition in February 2009.

It is published under the responsibility of the Secretary General of the OECD to bring information on this topic to the attention of a wider audience.

This compilation is one of a series of publications entitled "Competition Policy Roundtables".

PRÉFACE

Ce document rassemble la documentation dans la langue d'origine dans laquelle elle a été soumise, relative à une table ronde sur la Politique de la concurrence et l'économie informelle qui s'est tenue en février 2009 dans le cadre du Forum mondial sur la concurrence.

Il est publié sous la responsabilité du Secrétaire général de l'OCDE, afin de porter à la connaissance d'un large public les éléments d'information qui ont été réunis à cette occasion.

Cette compilation fait partie de la série intitulée "Les tables rondes sur la politique de la concurrence".

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EXECUTIVE SUMMARY

By the Secretariat

(1) The definition of the informal economy is not settled in the economics literature. Different definitions have been employed in order to capture different aspects of the informal economy.

Many terms are used to describe the informal economy. Terms such as 'underground', 'shadow', 'gray', 'informal', 'unofficial', 'unobserved', 'hidden', 'parallel', 'second' or 'household', are all used in the economics literature. There is not yet an established, widely-accepted definition of informality. Different researchers use different definitions for different purposes.

The notion of informality most commonly employed refers to economic activity which is not fully compliant with laws and regulations (or, in some cases, it can refer to economic activity which is itself illegal such as smuggling or selling illegal drugs). The various forms of non-compliance are as wide as there are laws and regulations, and include, for example, failure to comply with business registration requirements, or rules and regulations related to taxation, labour, health and safety, product safety, intellectual property, environment, consumer, or sector-specific laws. Some firms may operate in partial compliance with the law, for example by reporting and paying tax on some transactions, while allowing other transactions to go unreported.

(2) Although all countries have an informal sector, it often comprises a substantial share of Gross Domestic Product (GDP) in many developing countries and consequently it often accounts for a substantial share of the labour force. Trade between formal and informal firms can be significant and competition between formal and informal firms can reduce the market power of some firms in the formal sector.

Although some firms in the informal economy are large, in general they tend to be small, often employing relatively few people and relatively little capital. Estimates of the share of the informal economy out of GDP vary widely across countries. Typically, the share of the informal sector is between 10 and 50 percent of GDP, however, in developed economies it is typically less than 20 percent. Studies reveal that informality is increasing in both developed and developing countries.

In many developing countries, the informal sector is a prominent employer. In India, for example, it is estimated that 90 percent of the labour force is employed in the informal economy, producing 60 percent of India's GDP. In Latin America, one study found that the share of the workforce employed in the informal sector ranged from nearly 40 percent in the case of Chile, to 70 percent in the case of Bolivia. In some countries, informal firms account for nearly 100% of the sales of a particular good (e.g., meat products in Mongolia) and in other cases informal and formal firms coexist in the same market.

Trade between the informal and formal sector can be substantial. In some instances, informal firms serve as a source of low-cost inputs to the formal sector – such as goods produced by informal agricultural sector firms – and is often an alternative outlet for the products of the formal sector. In some cases formal firms supply informal retail outlets with products which are of secondary quality or close to expiry, which could not normally be sold through formal outlets.

The informal sector is often considered to be quite competitive because numerous firms compete against each other and there are often low entry barriers. Informal firms can therefore act as an important source of competitive pressure on formal firms and may reduce the market power of large formal firms in some instances. Entry by informal firms can also lead to an increase in the variety and convenience of products sold in the market.

(3) In spite of these advantages, many researchers are concerned that informal firms negatively impact an economy because they are typically less productive than formal firms. Poor access to credit, technology and government services, low scale and scope economies as well as the inability to attract an equally productive labour force are often cited as the principal factors.

Studies reveal that informal firms tend to be less productive than formal firms. One study of Latin American and Caribbean countries found that firms which had started out informal and later joined the formal economy had a 30 percent lower labour productivity than firms which had always been in the formal sector. Another study found that when the share of informal workers in a firm increases by one percent, its overall productivity declines by 0.3 percent. Studies like these indicate that efficiency gains could be derived by transferring production from low-productivity informal firms to more productive formal firms or by facilitating the formalisation of informal firms.

There are a number of reasons why informal firms are less productive than formal firms.

- Informal firms often suffer from a lack of access to credit. Investors and banks are often unwilling to invest in or extend credit to companies that lack proper documentation, such as business registration documents, licensing documents and tax compliance certificates. Many informal firms must rely on high-cost, informal sources of credit as a result. Poor access to credit often means that informal firms employ relatively little capital and consequently fail to exploit efficiency gains from the division of labour and hence scale and scope economies. As a result, informal firms tend to produce output that is more labour intensive than formal firms.

- Informal firms tend to employ lower productivity workers. One study found that most of the qualified workers were in formal companies that were obligated to provide high benefit packages. Formal firms can also offer greater security of job tenure, facilitating greater investment in firm-specific human-capital.

- Informal firms also suffer from lack of access to governmental services, such as infrastructure, banking or training services, or access to courts and law enforcement. The lack of access to courts limits their ability to enter into and enforce normal commercial contractual transactions. When they do attempt to enter such arrangements they are more likely to be the victim of breach of contract. At the same time, informal firms may be reluctant to report illegal activity and corruption to the relevant authorities for fear of bringing attention to themselves. Informal firms are thus more likely to be the victims of bad debts, corruption, and other forms of criminal activity, and more willing to pay bribes, increasing inefficiency.

Because informal firms are less productive than formal firms, they lower overall productivity within the economy, especially when it is extensive. Research backs this up and finds that informality reduces aggregate economic output and growth in developing countries.

(4) When informal firms fail to pay taxes, it can lead to a vicious circle of declining tax revenues and an increasing tax burden on the remaining firms. Higher tax rates can harm the productivity advantage of large formal firms as well as the incentive to innovate and invest.

When informal firms fail to meet their tax obligations, the size of the tax base is reduced, causing tax rates to increase on the remaining formal firms. The higher tax rates drive more firms into the informal economy – and forces the government to collect more taxes from an ever shrinking tax base. The presence of a significant informal sector can thus put tax-paying firms at an ever increasing disadvantage, leading to a vicious circle of higher tax rates and increasing informality. World Bank studies show that countries with a large informal economy frequently place a high tax burden on businesses in terms of number of taxes, number of tax payments and total tax payments.

When the cumulative cost of complying with tax regulations is high, informal firms will have a substantial competitive advantage over formal firms. High tax rates therefore may prevent the entry or expansion of large formal firms in a market. Moreover, high tax rates also harm the incentive to invest and innovate because it reduces the after-tax profits of formal firms. Reduced innovation and investment can harm productivity and economic growth.

(5) Competition from informal firms hurts formal firms in a variety of ways. Informal firms which fail to comply with various economic regulations or which fail to meet their tax obligations are able to expand and take market share from formal firms, even when they are less efficient overall. Informal firms may also undermine the incentives of formal sector firms to innovate by counterfeiting and otherwise infringing intellectual property rights.

Many countries expressed concerns about "unfair" competition from the informal sector. By failing to comply with various economic rules and regulations, informal firms are often able to undercut and steal market share from formal firms, even when they use inefficient production techniques. As a result, formal firms are less able to fully exploit economies of scale, limiting their own growth and productivity. For example, in Jamaica, certain informal firms have imported clothing and footwear products without paying customs taxes, with serious adverse effects on formal clothing and footwear enterprises.

In some instances, informal firms may fail to comply with intellectual property rules, undermining incentives for formal sector firms to engage in innovation, develop new products, and invest in branded products. For example, informal sector firms may free-ride on formal sector investments by making illegal copies of movies, music, software and books, or by infringing valid patents.

(6) The size of the informal economy depends on several factors: the effectiveness of government enforcement efforts to induce firms to comply with laws and regulations, the total economic cost that a firm must bear in order to comply with the law and, the economic benefits that accrue to firms that comply with the law.

Each firm's decision whether to comply with legal rules and regulations involves weighing the costs of and benefits of a number of factors.

- Strong government institutions focused on detecting firms that evade tax and other regulations encourage firms to comply with the law. The effectiveness of regulatory enforcement activities depends, in turn, on the resources put into detecting breaches of the rules, the penalties associated with violating rules, and the extent of corruption in the enforcement process.

- When the cost of complying with rules and regulations is high, firms are more likely to operate informally. Excessively high taxes, overly burdensome labour regulations, and high business registration costs push firms to operate informally.

- When firms operate formally they have better access to credit which allows them to make investments in capital and grow. Better access to credit and capital also allows formal firms to operate more efficiently through exploiting scale and scope economies. Moreover, when firms operate formally, their access to the courts and other formal contract enforcement mechanisms is enhanced. Access to these institutions encourages formal firms to increase the scale of their business operations.

Research by the World Bank clearly shows that there is a correlation between an index of indicators reflecting the "ease of doing business" and the size of the informal sector. Reducing the cost of doing business reduces the size of the informal sector by encouraging firms to join the formal economy. Experience suggests that reducing the size of the informal sector requires a coordinated, government-wide approach on all of the factors mentioned above.

(7) Submissions reported that competition law usually has jurisdiction over all economic activity – including activity by informal firms. However, there are difficulties applying competition law with regard to informal firms.

Nearly all the countries reported that, in principle, their competition laws applied to economic activity carried out by the informal sector. However there are significant issues in applying competition law to the informal sector. Informal firms tend to be small and highly mobile. There may be difficulty in serving legal notices. Even when prosecuted, these firms are less likely to have significant assets to pay any penalty and, in any case, may simply start up a new business elsewhere. In some countries organised crime is a component of the informal sector. Some competition authorities consider it too dangerous for their staff to prosecute anti-competitive behaviour by the mafia.

(8) Many countries reported that the presence of the informal sector created issues for defining the relevant market and the computation of market shares.

A key issue for many competition authorities was the extent to which informal firms could be said to compete in the same market as formal firms. Do informal firms compete directly with formal firms, offering a close substitute product, or is there "market segmentation", with the informal firms serving particular geographic areas (such as the inner city, or poorer

neighbourhoods), or a subset of consumers (particularly those consumers who are prepared to tolerate greater risks to quality or safety in exchange for a lower price), with the formal firms serving other areas or other consumers?

Even when the informal sector is considered to operate in the same market as the formal sector, problems often arise with computing market shares, because it is difficult to obtain reliable information on the output of informal firms. In some cases it may be possible to infer market shares of the informal sector by surveying upstream or downstream firms. However, even in these instances information collection can be difficult. Upstream or downstream firms may be reluctant to reveal their transactions with the informal sector when, for example, regulations prohibit transactions with firms which are not registered for taxation purposes.

(9) Competition authorities can play a useful role in attacking the underlying causes of informality by calling for wider government initiatives aimed at improving a variety of regulations that affect firms and competition in markets.

Government restrictions on markets can significantly reduce competition and productivity and encourage informality. Policies that place firms on equal footing can increase competitive intensity and productivity. Competition authorities can play an important role in this process by helping government bodies identify existing regulations that unnecessarily restrict competition or helping policy makers design new regulations that hinder competition as little as possible yet still achieve their policy goals. Moreover, competition authorities can urge the reform of overly burdensome labour, tax and product regulations, which encourage firms to operate informally and can co-operate in attempts by other government agencies to strengthen their enforcement of existing laws.

Some countries have established formal processes for reviewing regulatory proposals. As an example, the Ukraine competition authority reports that each year it is forced to take action against anticompetitive decisions of central and regional authorities, which impose additional pressures on businesses by increasing paperwork, increasing administrative charges, or increasing requirements to carry out unnecessary services.

NOTE DE SYNTHÈSE

(1) La littérature économique ne définit pas l'économie informelle de manière uniforme. Les auteurs emploient différentes définitions pour traduire ses divers aspects.

On utilise de nombreux termes pour décrire l'économie informelle ; les ouvrages économiques emploient ainsi les vocables d'économie « souterraine », « clandestine », « grise », « informelle », « officieuse », « non observée », « cachée », « parallèle », « seconde » ou « familiale ». L'informalité ne fait pas encore l'objet d'une définition établie et reconnue. Chaque chercheur opte pour la définition de son choix en fonction de ses objectifs.

Le plus fréquemment, la notion d'informalité fait référence à une activité économique qui ne respecte pas entièrement la législation et la réglementation (ou qui, dans certains cas, est intrinsèquement illégale, comme la contrebande ou la vente de substances illicites). Aussi diverses que les lois et règlements, ces infractions englobent par exemple le non-respect des obligations d'immatriculation des entreprises ou de la réglementation applicable dans les domaines suivants : fiscalité, main-d'œuvre, hygiène et sécurité, sécurité des produits, propriété intellectuelle, environnement, consommation ou législation sectorielle. Certaines entreprises peuvent tricher partiellement, par exemple en ne fiscalisant, par des déclarations incomplètes, que certaines de leurs opérations.

(2) Bien que tous les pays ont un secteur informel, celui-ci représente souvent une part non négligeable du PIB – et donc de la main-d'œuvre – dans les pays en développement. Les échanges entre entreprises formelles et informelles peuvent atteindre des volumes significatifs et la concurrence des deux types de structure peut réduire le pouvoir de marché de certaines entités du secteur formel.

À quelques exceptions près, les entreprises du secteur informel sont de petite taille, emploient relativement peu de monde et ont un assez faible capital. Les estimations de la part qu'occupe l'économie informelle dans le PIB varient beaucoup d'un pays à l'autre. Cette part oscille en général entre 10 et 50 %, et descend le plus souvent au-dessous de 20 % dans les pays développés. Les études indiquent que l'informalité s'accroît dans les pays aussi bien développés qu'en développement.

Le secteur informel est un employeur important dans nombre de pays développés. En Inde par exemple, on estime ainsi qu'il emploie 90 % de la population active et génère 60 % du PIB. Une étude consacrée à l'Amérique latine constate que la part de la population active employée informellement va de près de 40 % au Chili à 70 % en Bolivie. Dans certains pays, le secteur informel réalise la presque totalité des ventes d'un bien donné (à l'instar des produits carnés en Mongolie), tandis qu'ailleurs, entreprises formelles et informelles coexistent sur un même marché.

Les échanges entre le secteur formel et le secteur informel peuvent atteindre des volumes substantiels. Dans certains cas, les firmes informelles fournissent des intrants peu onéreux au secteur formel – issus par exemple d'exploitations agricoles informelles – et, souvent, constituent des débouchés de substitution pour les produits du secteur formel. Dans d'autres, ce dernier

approvisionne des points de vente informels en produits médiocres ou bientôt périmés que les circuits officiels de détail ne pourraient pas écouler.

Le secteur informel est souvent considéré comme un secteur tout à fait concurrentiel, dans la mesure où de nombreuses entreprises s'y font concurrence et où les obstacles à l'entrée sont souvent minimes. Ces structures informelles peuvent donc exercer une pression concurrentielle sur leurs consœurs formelles et, parfois, atténuer le pouvoir de marché de grandes entreprises officielles. La création d'entités informelles peut aussi entraîner une diversification et une meilleure adéquation des produits disponibles.

(3) Malgré ces avantages, de nombreux chercheurs s'inquiètent de l'impact négatif que les entreprises informelles, en raison d'une productivité en général moindre, ont sur l'économie. Les principaux motifs de cette plus faible productivité sont l'accès malaisé au crédit, aux technologies et aux services de l'État, la faiblesse des économies d'échelle et de gamme, et l'incapacité à séduire une main-d'œuvre aussi productive que celle du secteur formel.

Les études révèlent que les entreprises informelles sont en général moins productives que les entreprises formelles. L'une de ces études, portant sur l'Amérique latine et les Caraïbes, observe que les entités nées dans l'informalité et ayant rejoint ultérieurement le secteur formel affichent une productivité de la main-d'œuvre inférieure de 30 % à celle des entreprises ayant toujours appartenu au secteur formel. Une autre étude constate que l'augmentation de 1 % de la part des travailleurs informels dans l'effectif d'une entreprise s'accompagne d'une baisse de 0.3 % de sa productivité globale. De telles études témoignent de la possibilité d'obtenir des gains d'efficience grâce au transfert de la production d'entreprises informelles peu productives vers des entreprises formelles plus productives ou grâce à des actions visant à faciliter la formalisation d'entreprises informelles.

Différentes raisons expliquent la moindre productivité des entreprises informelles :

- Elles pâtissent fréquemment d'un accès insuffisant au crédit. Il n'est ainsi pas rare que les investisseurs et les banques se montrent réticents à financer par des investissements ou des prêts des entreprises qui ne fournissent pas tous les documents utiles : certificat d'immatriculation, licences en bonne et due forme, quitus fiscal, etc. De ce fait, de nombreuses entreprises informelles sollicitent des sources de crédit officieuses et onéreuses. Cet accès malaisé au crédit a souvent pour corollaire une capitalisation insuffisante qui ne permet pas d'exploiter les gains d'efficience qu'offre la division du travail et, partant, les économies d'échelle et de gamme. C'est pourquoi les entreprises informelles, en général, utilisent pour leur production davantage de main-d'œuvre que les entreprises formelles.

- Le plus souvent, les entreprises informelles emploient des travailleurs moins productifs. Selon une étude, la plupart des travailleurs qualifiés ont un employeur du secteur formel qui se doit de leur offrir des prestations d'emploi de haut niveau. Les entreprises formelles peuvent aussi proposer une meilleure sécurité de l'emploi en facilitant un surcroît d'investissements dans leur capital humain.

- Les entreprises informelles pâtissent également d'un accès insuffisant aux services de l'État : infrastructures, services bancaires, formation, justice, exécution de la loi, etc. Leur accès difficile à la sphère judiciaire restreint leur capacité à nouer et appliquer des contrats commerciaux normaux ; lorsqu'elles concluent de tels contrats, elles courent un plus grand risque de violation. Parallèlement, les entreprises informelles peuvent montrer quelque réticence à signaler aux autorités des activités illégales et des faits de corruption, par crainte

d'attirer l'attention sur leurs propres agissements. Elles sont donc plus facilement victimes de défauts de paiement, de faits de corruption et d'autres formes de comportements pénalement répréhensibles, et plus enclines à verser des pots-de-vin, ce qui accroît leur inefficience.

Les entreprises informelles étant moins productives que les entreprises formelles, elles abaissent la productivité globale de l'économie, notamment lorsque celle-ci est extensive. C'est ce que corroborent différentes recherches, selon lesquelles l'informalité diminue la production économique globale et la croissance des pays en développement.

(4) Le fait que les entreprises informelles échappent à l'impôt peut enclencher le cercle vicieux du manque à gagner fiscal et de l'alourdissement de la charge fiscale des autres entreprises. Or une hausse de la fiscalité est susceptible de rogner l'avantage que détiennent les grandes entreprises formelles en matière de productivité, ainsi que les incitations à innover et investir.

Lorsque les entreprises informelles ne s'acquittent pas de leurs obligations fiscales, elles réduisent l'assiette de l'impôt et accroissent le taux de la fiscalité qui pèse sur les entreprises formelles. Cette hausse des taux incite davantage d'entreprises à rejoindre le secteur informel, et contraint les autorités à ponctionner davantage des entreprises de moins en moins nombreuses. L'existence d'un secteur informel d'une certaine taille peut donc désavantager de plus en plus les entités fiscalisées, et engendrer un cercle vicieux dans lequel les taux d'imposition s'alourdissent et l'informalité s'accroît. Des études de la Banque mondiale montrent que les pays où prospère l'économie informelle imposent souvent lourdement les entreprises, celles-ci supportant une taxation à la fois plus diversifiée, plus répétitive et plus élevée.

Lorsque le coût cumulé des obligations fiscales est lourd, les entreprises informelles disposent d'un net avantage concurrentiel par rapport aux entreprises formelles. Des taux d'imposition élevés peuvent donc empêcher l'entrée ou l'expansion de grandes entreprises formelles sur un marché. Ils peuvent en outre brider les incitations à investir et innover en réduisant les bénéfices après impôt des entreprises formelles. Or une baisse de l'innovation et des investissements peut porter préjudice à la productivité et à la croissance économique.

(5) La concurrence des entreprises informelles est néfaste aux entreprises formelles à plusieurs titres. Les entreprises informelles qui s'exonèrent de diverses réglementations économiques ou obligations fiscales sont en mesure de se développer et de prendre des parts de marché à des entreprises formelles, malgré parfois une efficience globale inférieure. Elles peuvent aussi saper les incitations à innover qui visent le secteur formel en se livrant à la contrefaçon et en perpétrant d'autres violations de droits de la propriété intellectuelle.

De nombreux pays se sont inquiétés de la concurrence « déloyale » du secteur informel. En s'exonérant de diverses réglementations économiques ou obligations fiscales, les entreprises de ce secteur sont souvent en mesure, y compris en utilisant des techniques de production inefficientes, de faire de la sous-enchère et de voler des parts de marché aux entreprises formelles, si bien que celles-ci exploitent incomplètement les économies d'échelle et voient leur propre croissance et leur productivité bridées. À titre d'exemple, l'importation de vêtements et de chaussures par certaines entreprises informelles jamaïcaines sans versement des droits de douane afférents a eu de graves effets néfastes sur les entreprises formelles du secteur de l'habillement.

Dans certains cas, les entreprises informelles peuvent ne pas respecter le droit de la propriété intellectuelle, et miner ainsi la propension du secteur formel à innover, mettre au point de nouveaux produits et investir dans des produits de marque. Elles peuvent par exemple parasiter

les investissements du secteur formel en piratant des films, des œuvres musicales, des logiciels et des livres, ou en se servant de brevets de manière illégale.

(6) La taille de l'économie informelle dépend de plusieurs facteurs : l'efficacité des efforts que déploient les autorités pour inciter les entreprises au respect des lois et règlements, le coût total de ce respect pour chaque entreprise et les avantages économiques qu'il confère.

La décision que prend chaque entreprise de respecter ou non la loi et la réglementation suppose de soupeser les coûts et avantages de différents éléments :

- L'existence d'institutions publiques fortes, axées sur le repérage des entités qui fraudent le fisc et enfreignent la réglementation, incite les entreprises à respecter la loi. L'efficacité de l'application de la réglementation dépend à son tour des ressources consacrées à la détection des infractions, des sanctions afférentes et de l'ampleur de la corruption régnant dans l'appareil répressif.

- Les entreprises sont davantage enclines à opérer de manière informelle lorsque le coût du respect de la réglementation est élevé. Taxes très lourdes, réglementation excessive du travail et frais élevés d'immatriculation sont autant d'incitations à rejoindre le secteur informel.

- L'appartenance au secteur formel donne aux entreprises un meilleur accès au crédit, ce qui leur permet d'investir et de croître. La plus grande disponibilité du crédit et de capitaux leur permet aussi de gagner en efficience en tirant parti d'échelle et de gamme. En outre, leur accès à la justice et à d'autres mécanismes officiels d'exécution des contrats est renforcé. Ces différentes facilités institutionnelles sont autant d'incitations pour elles à étoffer leurs activités.

Des recherches menées par la Banque mondiale démontrent sans ambages une corrélation entre un indice composé d'indicateurs sur la « facilité de faire des affaires » et la taille du secteur informel. La baisse des coûts d'exploitation des entreprises réduit ce pan de l'économie en encourageant les entreprises à rejoindre l'économie formelle. L'expérience indique que l'ensemble du gouvernement doit, pour réduire le secteur informel, adopter une démarche coordonnée visant tous les éléments susmentionnés.

(7) Les exemples fournis par les pays indiquent que le droit de la concurrence s'applique, le plus souvent, à toutes les activités économiques, y compris informelles. On observe toutefois des difficultés dans l'application de ce droit aux entreprises informelles.

La presque totalité des pays indique qu'en principe, le droit national de la concurrence s'applique aux activités économiques du secteur informel. La Turquie, par exemple, cite plusieurs cas dans lesquels, malgré une mise en cause, la fixation de prix par des entreprises informelles n'a pas été censurée. L'application du droit de la concurrence au secteur informel pose toutefois de sérieuses difficultés. En effet, les entreprises informelles sont souvent petites et très mobiles, ce qui complique la délivrance d'assignations. Et lorsqu'elles sont poursuivies, ces entreprises présentent plus de risques d'insolvabilité face à une amende, et peuvent toujours, tout simplement, renaître ailleurs. Dans certains pays, la criminalité organisée appartient au secteur informel. Certaines autorités de la concurrence considèrent qu'il est trop dangereux pour leur personnel de poursuivre la mafia pour agissements anticoncurrentiels.

(8) De nombreux pays indiquent que l'existence d'un secteur informel crée des difficultés pour définir les contours du marché et calculer les parts de marché.

Pour maintes autorités de la concurrence, une question essentielle consiste à déterminer dans quelle mesure les entreprises informelles peuvent être considérées comme des concurrentes des entreprises formelles sur leurs propres marchés. Les entreprises informelles font-elle ainsi directement concurrence aux entreprises formelles en proposant des produits similaires, ou observe-t-on une segmentation du marché dans laquelle les entreprises informelles desservent des zones géographiques spécifiques (centre ville, quartiers pauvres, etc.) ou un segment donné de population (les consommateurs prêts à supporter, en échange de prix plus bas, un risque plus élevé en termes de qualité ou de sécurité), tandis que les entreprises formelles s'adressent à d'autres territoires ou consommateurs ?

Même lorsque l'on estime que les secteurs informel et formel opèrent sur un même marché, on note souvent des problèmes de calcul des parts de marché car il est difficile de disposer d'informations fiables sur la production des entreprises informelles. On peut dans certains cas déduire les parts de marché du secteur informel en enquêtant auprès d'entreprises situées en aval ou en amont, mais le recueil d'informations de cette nature peut rester ardu, et les entreprises interrogées peuvent montrer des réticences à révéler les transactions qu'elles mènent avec le secteur informel lorsque, par exemple, la réglementation interdit toute transaction avec des entreprises non immatriculées auprès du fisc.

(9) Les autorités de la concurrence peuvent contribuer utilement à traiter les causes sous-jacentes de l'informalité en appelant l'État à élargir ses initiatives en faveur de l'amélioration des diverses réglementations qui concernent les entreprises et la concurrence sur les marchés.

Les restrictions imposées par la puissance publique à certains marchés peuvent sérieusement entraver la concurrence et la productivité, et encourager l'informalité. Les politiques qui mettent les entreprises sur un pied d'égalité peuvent accroître l'intensité concurrentielle et la productivité. Les autorités de la concurrence peuvent puissamment contribuer à ce processus en aidant les organes de l'État à inventorier les réglementations qui restreignent inutilement la concurrence, ou en aidant les responsables des politiques publiques à concevoir de nouvelles réglementations qui, tout en restant en phase avec leurs objectifs, entravent le moins possible la concurrence. En outre, les autorités de la concurrence peuvent pousser à réformer les réglementations trop pesantes en matière de travail, de fiscalité et de produits, qui incitent les entreprises à opérer de manière informelle, et peuvent prêter leur concours aux efforts déployés par d'autres organismes publics pour renforcer l'application des textes en vigueur.

Certains pays ont mis en place des processus officiels d'examen des propositions de réglementations nouvelles. À titre d'exemple, l'autorité de la concurrence de l'Ukraine indique être contrainte, chaque année, de réagir aux décisions anticoncurrentielles d'autorités centrales et régionales qui accroissent la pression subie par les entreprises en augmentant la paperasserie, les frais administratifs ou les obligations de service inutiles.

NOTE BY THE SECRETARIAT

1. Introduction

Why should competition agencies be concerned about the "informal economy", which, despite being hard to define and measure, is significant in many countries? Is it because informal firms present a kind of unfair competition to tax-paying, law-abiding firms? Because some informal firms sell counterfeit or otherwise illicit goods? Because in some cases the presence of informal firms can complicate the measurement of the market power of formal firms? These are serious issues and will be treated in this paper, but there is another issue as well: informal firms reduce the overall productivity and therefore the growth potential of economies. Moreover, less developed economies, those most in need of increased productivity and growth, have higher rates of informality.

Informal firms "compete" against more productive formal firms by evading taxes, labour, and product regulations, by providing unlicensed services or by selling goods that are counterfeit or smuggled. These practices artificially lower the supply costs of informal firms and give them an unfair advantage over legitimate businesses. Formal firms, as a result, may be unable to enter into or expand within a market because they simply cannot offer prices that are low enough to attract a substantial number of consumers. Firms with intellectual property can be especially hard hit, as informal firms are likely to free-ride on their investments by making copies of movies, music, software and books, but informality affects the viability of more productive formal firms in many sectors.

The impact on market productivity is highly negative. Numerous studies document productivity concerns and recent research indicates that informal firms are 30% less efficient than formal firms, on average. But informal firms are able compete against more productive formal firms precisely because they evade the rule of law. Competition policy makers should therefore see little value in this type of competition, for it is ultimately unhealthy to the economy. Indeed, research indicates that informality reduces aggregate economic output and growth in developing countries.

Although some competition authorities have tackled informality, the submissions to this roundtable indicate that they have done so only in a limited number of instances. Their actions have focused on eliminating overly broad government regulations and excessive and discriminatory pricing practices for mandatory services supplied by the government, legal exemptions that contributed to informality and firms that evaded taxes and competed unfairly with formal firms.

This paper does not argue for increased competition law enforcement to fight informality. But competition agencies could usefully encourage their governments to attack the underlying causes of informality by calling for wider government initiatives aimed at improving a variety of regulations that affect firms and competition in markets. For example, competition authorities can urge the reform of overly burdensome labour, tax and product regulations, which encourage firms to operate informally. Likewise, inefficient business registration regulations that require costly, time-consuming efforts by firms (in some cases lasting more than two months) encourage informality. Regulations that specifically restrict competition (such as restrictions on business operating hours or resale below cost laws) protect small, informal firms from competition from more productive formal firms. By taking a measured, but determined approach (especially where informality is extensive), governments can reduce the cost disadvantage of formal firms, and help them to expand their role in the market, improving competition and

raising productivity. In the long run, both firms and consumers are better off and government efficacy is improved when informality is reduced.

The main points of this paper are:

- Despite debate over the definition of the informal firm, reasonable measures estimate that the informal economy is large in many developing countries, often amounting to more than 50% of their GDP. In contrast, within industrial countries, it is estimated to be 15% of the GDP. Researchers also find that it is growing in both developing and industrialised countries.

- Formal firms are more productive than informal ones, due to scale and scope economies, access to capital and technology and more advanced methods of production and distribution. Research indicates that significant productivity gains could be achieved by transferring production from low-productivity informal firms to more productive formal firms or by facilitating the formalisation of informal firms. Research also indicates that economic growth would significantly increase in developing countries if informality was reduced.

- Formal firms are also harmed by a vicious circle of higher tax rates due to the presence of a significant number of informal firms. Informality results in a reduced tax base and thus causes tax rates to increase on the remaining formal firms. The higher tax rates drive more firms into the informal economy – and forces the government to collect more and more taxes from an ever shrinking tax base. The presence of a significant informal sector can thus put tax-paying firms at an ever increasing disadvantage.

- Higher tax rates can remove the productivity advantage of large formal firms. When the cumulative cost of complying with tax and other regulations is high, informal firms will have a substantial competitive advantage over formal firms, which may prevent the entry or expansion of formal firms in the market.

- High taxes also harm the incentive of formal firms to innovate and invest because it reduces the after-tax profits of formal firms. Reduced innovation and investment can harm productivity and economic growth.

- There appears to be a limited amount of competition law enforcement involving informal firms. Although competition authorities have successfully attacked informality in some instances, significantly reducing it calls for wider government initiatives. Advocacy by authorities can communicate the beneficial effects of reducing informality in the long run. By identifying regulations that unnecessarily restrict competition and advocating for their reform, competition authorities can help can encourage more firms to enter, or not leave, the formal economy.

- Governments can reduce informality and increase productivity in markets by:
  - lowering regulatory compliance costs,
  - eliminating unnecessary restrictions on product market competition,
  - reviewing labour legislation targeting excessively high severance costs and overly rigid contract requirements,
  - simplifying complex tax systems and reducing overly burdensome fees and taxes,
  - streamlining business registration processes,
  - strengthening tax and regulatory enforcement, and

– improving access to credit and procurement opportunities.

2. What does the term informal mean?

In their work on "informality," researchers have employed a variety of terms to describe the particular issue they were examining[1]. Terms such as 'underground', 'shadow', 'gray', 'informal', 'unofficial', 'unobserved', 'hidden', 'parallel', 'second' or 'household', among others, are frequently, used in the economics literature, but rarely consistently. Gerxhani explains that no single definition of the informal economy has been found to be appropriate given researcher's diverse interests in this area and as a result "researchers gave up trying to formulate a unique definition. Instead, they have attempted to define the informal sector in accordance with the problem at hand."[2] Put simply, informality means different things to different people[3].

The number of activities included within a definition of the informal economy reflects the wide-ranging interest in the issues. In some instances research on informality is focused on labour issues[4]. Other research is focused on excessive regulation, unfair competition and low productivity. Moreover, it is generally understood that the informal economy is not simply comprised of unregistered street vendors or small businesses with five or fewer employees, but also includes large companies with sizeable workforces that evade taxes, fail to comply with various product, labour or land regulations or which engage in other extra-legal activities.

More specific and narrow definitions of the informal economy exist, notably in the national accounts literature. For example, an OECD handbook partitions the 'non-observed' economy into five categories[5]:

- underground production – that is, activities that are deliberately concealed from public authorities in order to avoid taxes, social security payments or certain legal standards and administrative procedures[6],
- illegal production – that is, both the production of goods and services whose production, sale and mere possession are forbidden by law or activities which are usually legal but which become illegal when carried out by unauthorised producers. The provision of services by unlicensed agents, for example, are included in this category,

1 Keith Hart (1973) was the first person to use the term informal sector. He used it to describe a portion of the urban labour force that worked outside of the formal sector. Hart's original notion of the informal economy has continued to survive but new drastically different notions have also been employed. For example, shortly after Hart's work was published, a report by the International Labour Office characterised informality as the avoidance of taxes and government regulations.

2 Several papers in the informality literature have recently focused precisely on how informality is defined and the consequence of the definition on measurement. See Perry *et al*. (2007), Gerxhani (2004) and Henley, Arabsheibani, and Carneiro (2006) for further details.

3 See Kenyon and Kapaz (2005).

4 A large portion of the literature focuses on labour welfare issues or on job quality issues such as pension and social security rights, and health, safety and other labour issues.

5 The precise definitions for each of these five categories are too complex to reproduce here and overlap in some instances. The interested reader is referred to OECD, Measuring the Non-Observed Economy – A Handbook, (2002).

6 Legal standards include minimum wage or maximum hour laws as well as safety or health standards, for example. Administrative procedures include rules that certain statistical questionnaires or other administrative forms must be completed.

- informal sector production with the primary intent of generating employment and income to the person concerned. Firms engaging in this behaviour typically operate at a low level of production with little or no division of labour[7]. In the national accounts literature, the informal sector is often comprised of firms with five or fewer employees,
- household production for own final use focuses on the production of crops and livestock, the construction of houses and other economic activities for personal use, and
- production missed due to deficiencies in data collection includes all productive activities that should be accounted for by the basic data collection programme but are missed due to statistical deficiencies.

Although informal firms are specifically defined in the national accounts literature, many researchers in this field argue that this narrow definition misses the point. That is, that the key concern about informality is that it reduces productivity and negatively affects social welfare, particularly where there is extensive informality across a sector or sectors of the economy. They contend that informality is a symptom of broader problems that stem from poor policymaking and ineffective implementation. Addressing the underlying causes of informality can be part and parcel of a wider development agenda[8].

3. The size and nature of the informal economy

Although data issues haunt many empirical studies, they are particular prevalent in the informality literature. By definition, most economic activity that is classified as informal is not captured in national accounts data. Thus, without recourse to other sources of information, the data that are needed to assess the size of the informal economy simply do not exist. Data must therefore either be collected directly from firms and households, or informality must be assessed indirectly through other data sources such as electricity or currency demand data[9]. To better illustrate the impact of the definition of informality and estimation techniques, the next section briefly reviews these issues.

3.1. Measuring the size of the informal economy in Latin America

Recent results facilitate comparison of estimates of the size of the informal economy based on different definitions or techniques[10]. This work, which is focused on informality in Latin America, reports six different estimates of the size of the informal economy in a variety of Latin America countries. The results of three of their measures of informality are reproduced in Figure 1.

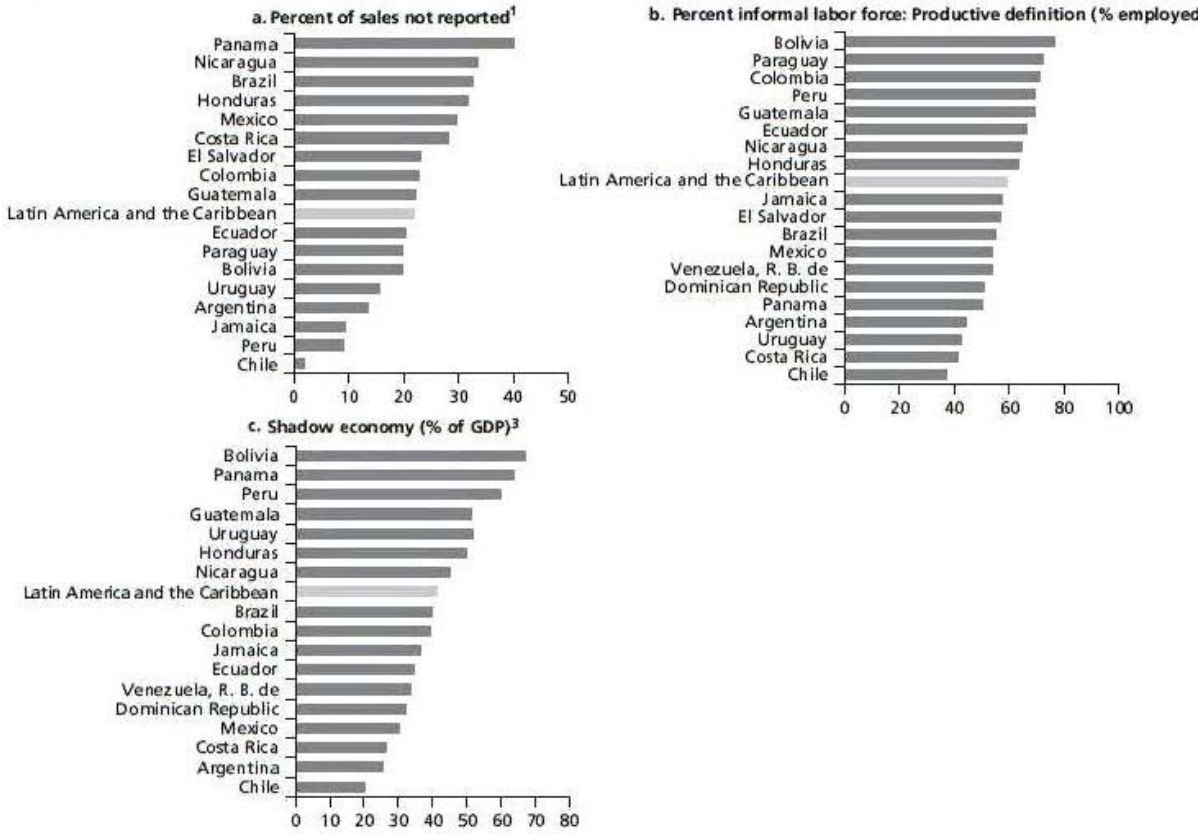
7 The national accounts literature points out that the vast majority of firms that they classify as informal provide goods and services whose production and distribution are perfectly legal.

8 See Perry *et al*. (2008).

9 See Thomas (1993, 1999) and Breusch (2005) for additional details and criticism of these approaches.

10 See Perry *et al*. (2007)

Figure 1. Selected Measures of informality[11]



Note:
1. Informality is measured by the percentage of sales that businesses do not report for tax purposes (Investment Climate Surveys 2006).
2. "An individual is considered an informal worker if (s)he belongs to any of the following categories: (i) unskilled self-employed, (ii) salaried worker in a small private firm, (iii) zero-income worker" (Gasparini and Tornarolli 2006, 8).
3. "The shadow economy includes all market-based legal production of goods and services that are deliberately concealed from public authorities for the following reasons: (1) to avoid payment of income, value added or other taxes, (2) to avoid payment of social security contributions, (3) to avoid having to meet certain legal labor market standards, such as minimum wages, maximum working hours, safety standards, etc., and (4) to avoid complying with certain administrative procedures, such as completing statistical questionnaires or other administrative forms" (Schneider 2005, 600).
In all cases, regional figures are unweighted averages.

One of the ways in which informality is assessed is to obtain information on it in as "direct" a way as possible. Although direct estimation techniques do not directly measure the extent of informality *per se*, they do rely on either voluntary survey data or tax audits to construct estimates of the informal economy. Surveys typically ask firms to voluntarily reveal their income, impressions of tax compliance within their industry, and other aspects of their business. The World Bank investment climate surveys measures tax compliance by asking firms about the level of under reporting of both income and workers. Figure 1, panel a. reports estimates of the percent of sales not reported by firms. It reveals a range of under reporting from less than 5% in the case of Chile to over 40% in the case of Panama. These estimates indicate that 5% of the sales of firms in Chile are in the informal economy while it is over 40% in the case of Panama.

Household and labour surveys provide another direct way of measuring the informal economy. Figure 1, panel b. reports on a measure of informality that is often referred to as the "productive" definition, a definition that is more focused on small informal firms. The productive definition includes self-employed, own account workers, with or without family workers and micro entrepreneurs and their

11 See Perry *et al*. (2007)

employees[12]. Under this definition, the proportion of the labour force that is informal ranges from nearly 40% in the case of Chile to over 70% in the case of Bolivia.

Estimates of the extent of informality can also be found indirectly[13]. Figure 1, panel c. reports estimates of the size of the shadow economy that are based upon a statistical methodology often referred to as Multiple Indicator Multiple Cause[14]. The shadow economy includes all activities that are deliberately concealed from public authorities in order to avoid taxes, social security payments or certain legal standards and administrative procedures[15]. Under this measure, informality ranges from 20%, in the case of Chile to approximately 70%, in the case of Bolivia.

These results show that the definition of informality matters greatly. Measures of the extent of informality based on workers are higher than when it reflects the extent of sales not reported[16]. Moreover, the rank order has changed as well. Bolivia, which was near the bottom in terms of unreported sales, is now ranked at the top under both the shadow economy and productive definitions. Based on these results, informal labour appears to be a relatively more significant issue in Bolivia than in other Latin American countries. Policy makers should recognise that different definitions will produce different outcomes.

3.2. Rising informality around the world

Researchers are interested in both the extent of informality and whether it is increasing or decreasing. Table 1 summarises results of the size of the shadow economy for three different points in time 1990/1991, 1994/1995 and 1999/2000. The estimates show that the shadow economy in 1999/2000 accounted for, on average, 41.2% of the GDP of 24 African economies[17], 41.5% of the GDP of 17 Central and South American economies[18], 26.3% of the GDP for 25 Asian economies[19], 37.9% of the GDP for 23 transition

12 Another definition is referred to as the legalistic definition. It is focused more on the coverage of workers by mandated labour protections. See Hussmanns (2004) for further details.

13 Several methods exist. National income and product accounts can be used to estimate the extent of informality based on the discrepancy between aggregate income and expenditure. Electricity data and currency demand data have also been used. The most popular method, however, is referred to as the Multiple Indicator Multiple Cause methodology.

14 See Perry *et al*. and Schneider and Enste (2000, 2002).

15 The definition of the shadow economy as applied by the authors thus appears to correspond exactly with the definition of the underground economy discussed above.

16 The authors note that the correlation between these two measures of informality is quite low, only 0.11. Such findings point out that other factors, described below, have an impact on the extent of informality. Their results also reveal a low correlation between the shadow economy measures and under reported sales (0.29) but a relatively high correlation (0.60) with estimates found using the productive definition.

17 The 24 African economies include Algeria, Benin, Botswana, Burkina Faso, Cameroon, Côte d'Ivoire, Arab Republic of Egypt, Ethiopia, Ghana, Kenya, Madagascar, Malawi, Mali, Morocco, Mozambique, Niger, Nigeria, Senegal, South Africa, Tanzania, Tunisia, Uganda, Zambia and Zimbabwe.

18 The 17 Central and South American economies include Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru, Uruguay, Bolivarian Republic of Venezuela.

19 The 25 Asian economies include Bangladesh, China, Hong Kong (China), India, Indonesia, Iran Islamic Republic, Israel, Japan, Jordan, Republic of Korea, Lebanon, Malaysia, Mongolia, Nepal, Pakistan, Philippines, Saudi Arabia, Singapore, Sri Lanka, Syrian Arab Republic, Thailand, Turkey, United Arab Emirates, Vietnam, Republic of Yemen.

economies[20], and 16.8% of the GDP for 21 OECD countries[21]. The estimates also indicate that, for the 11 year period studied and for the economies for which estimates are available, the extent of informality grew by 7.3% in Africa, 7.3% in Central and South American economies, 5.4% in Asian economies, 6.4% in transition economies and 3.6% in OECD countries. Additional detailed statistics are available in Appendix A for 110 economies for the year 2000[22]. Concerns about the causes of informality and the impact of informality are discussed in the next two sections.

Table 1. Average size of the shadow economy for developing, transition and OECD-economies[23]

Countries/Year	Average Size of the Shadow Economy-Value added in % of official GDP using DYMIMIC and Currency Demand method		
	(Number of Countries)		
Mostly developing countries:	1990/91	1994/95	1999/2000
Africa	33.9 (24)	37.4 (24)	41.2 (24)
Central and South America	34.2 (17)	37.7 (17)	41.5 (17)
Asia	20.9 (25)	23.4 (25)	26.3 (25)
Transition countries	31.5 (23)	34.6 (23)	37.9 (23)
Highly developed OECD Countries	13.2 (21)	15.7 (21)	16.8 (21)

4. Causes of informality

A large variety of factors can affect the incentives to operate informally. This part of the Note provides background information to illustrate the kinds of factors that policy makers might consider when they focus their efforts on reducing informality. It does not attempt to create a comprehensive list identifying all possible causes, and does not focus on social, demographic or macro economic factors[24], even though these are important, but rather, examines the relationship between the extent of informality and regulations, taxes, and governance structures.

20 The 23 transition economies include Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Kazakhstan, Kyrgyz Republic, Latvia, Lithuania, Moldova, Poland, Romania, Russian Federation, Slovak Republic, Slovenia, Ukraine, Uzbekistan and Yugoslavia.

21 The 21 OECD countries examined include Australia, Austria, Belgium, Canada, Denmark, Germany, Finland, France, Greece, Great Britain, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, Portugal, Sweden, Switzerland, Spain and the United States.

22 Although the underlying methodology used by Schneider (2005) has been critiqued in the literature, there are three important reasons for reporting them here. First, one needs to keep in mind that no definition of informality captures it perfectly and no estimation technique is ideal either - all definitions and techniques have weaknesses. Second, knowing the extent of informality among countries is important as it potentially helps identify best practices that may reduce the extent of it. Third, his estimates document the extent of informality in a significant number of countries.

23 See Schneider (2005).

24 The submission from Ukraine indicates that the size of the informal economy expanded temporarily in response to market transformation processes in the 1990s. Rapid migration to urban centres can generate excess unskilled labour that is drawn into the informal economy. Macro economic instability triggered by a currency crises or an economic downturn can impact job flows between the formal and informal economy.

4.1. The impact of regulations on informality

Many researchers have pointed out that many regulations are cumbersome, unnecessary or go further than necessary to achieve their policy objectives. Overly burdensome or inefficient regulation can, in turn, significantly increase the cost of both joining the formal economy and operating within it. By reducing these barriers, policy makers can increase participation in the formal economy[25]. Furthermore, reducing unnecessary restrictions on businesses may increase the intensity of competition in the formal economy as more firms may be willing to enter it. Particularly in concentrated markets, the removal of unnecessarily costly regulations can contribute to increasing the level of competition and to improving a country's overall economic performance.

4.1.1. Business registration regulations

The ease with which firms can register their business and begin formal operations has consistently been identified as a significant obstacle facing informal firms. In many countries costly and inefficient business registration procedures significantly hinder the incentive of firms to join the formal economy[26]. Rather than hindering efforts, governments should actively encourage formal business registration.

To help measure the ease of doing business within a country, the World Bank publishes the Doing Business Indicators (DBI) each year. The DBIs are designed to capture that ease of doing business in ten areas, one of which monitors the ease of registering a business[27]. In measuring the ease of starting a business, countries are ranked on:

a) the number of procedures that a company needs to complete before legally starting operations[28],

b) the time (in terms of number of days) necessary to complete each of these procedures,

c) the cost to complete each of these procedures and to start operating the business (as a percentage of income per-capita); and

d) the minimum capital that must be paid in by firms in order to start a business (as a percentage of income per-capita).

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25 See submissions from Bulgaria, Egypt, Jordan, Kenya, Mongolia, Turkey and Ukraine to OECD, Global Forum on Competition, Competition Policy and the Informal Economy.

26 The submission from Ukraine specifically cites business registration procedures as a key obstacle to the formal economy (OECD, Global Forum on Competition, Competition Policy and the Informal Economy).

27 The ten areas identified by the World Bank include: starting a business; dealing with licenses; employing workers; registering properties; getting credit; protecting investors; paying taxes; trading across borders; enforcing contracts; and closing a business. See the 2008 Doing Business Report, Comparing Regulations in 178 Countries, at www.doingbusiness.com.

28 These include obtaining all necessary permits and licenses and completing all required inscriptions, verifications and notifications with authorities to enable the company to formally operate.

Table 2. Ease of Starting a Business[29]

Region or Economy	Duration (days)	Procedures (number)	Cost (% of GNI per capita)	Paid in min. capital (% of GNI per capita)
Latin America & Caribbean	64.5	9.7	39.1	3.4
East Asia & Pacific	44.2	8.6	32.3	37.3
South Asia	32.5	7.4	31.9	0.6
Middle East & North Africa	23.5	8.4	41.0	331.4
Eastern Europe & Central Asia	22.6	7.7	8.6	36.0
OECD	13.4	5.8	4.9	19.7

Appendix B reports detailed statistics on the ease of starting a business for 180 economies from the 2008 DBI database and regional analyses are reported in Table 2 above. Although the OECD countries rank well in terms of the ease of starting a business there is still significant variation among them. For example, the speed with which companies can open a business varies from one to two days in the cases of New Zealand and Australia respectively, to as much as 47 days in Spain. Outside the OECD, Georgia, Mauritius, Puerto Rico, and Singapore were among the top 10 economies in terms of the overall ease of starting a business.

The large variation in the duration for registering a business as well as start-up costs suggests that there is significant room for countries to improve these policies and in turn increase participation in the formal economy. In general, the data indicate that developing economies regulate business start-ups much more than developed economies. Especially long and costly registration programmes seem likely to deter all but the most determined firms from registering their business and joining the formal economy. In Brazil it takes 155 days to register a business and in Indonesia it takes 76 days. Substantial capital requirements also deter businesses from registering. Appendix B indicates that Syria, Guinea-Bissau, Niger, Ethiopia, Togo, Djibouti, Central African Republic, Guinea, Oman, and Burkina Faso have the highest capital requirements for starting a business. In contrast, 79 economies out of the 181 monitored in 2008 DBI database had no minimum capital requirements.

4.1.2. Labour regulations

Labour regulations cover hiring, firing, severance pay, minimum wage, and overtime hours and pay as well as mandatory benefits packages, social security payments, rights of association and collective bargaining rights, among others. They are often enacted and designed to protect workers from unfair and discriminatory actions. While governments try to find the right balance between protecting workers and ensuring labour market flexibility, most developing countries err on the side of excessive rigidity to the detriment of businesses and workers alike. Businesses, as a result, are more likely to hire informally when regulations are less flexible. Research backs this up and finds an association between rigid labour laws and the extent of informality within an economy[30].

Table 3 highlights some of the findings for specific economies from 2008 World Bank DBIs. According to the DBI measures, countries in Africa such as Equatorial Guinea, São Tomé and Principe, Tanzania, Congo Republic, Central African Republic, Guinea-Bissau, Niger and Democratic Republic of Congo have the most inflexible labour laws. Table 3 also indicates that only 3 OECD countries (United States, Australia and Denmark) are listed among the top 10 in terms of ease of employment. High severance costs encourage firms to use informal labour as employment decisions do not always work out well and economic downturns may lead to costly layoffs. Countries with significant severance costs include Zimbabwe, Sierra Leone, Ghana, Zambia, Mozambique, Equatorial Guinea, Egypt, and Sudan.

29 Calculations from the DBI database from 2008.

30 See World Bank, Doing Business 2007, How to Reform.

Table 3. World Bank Research Findings on Employment Regulation

Overall DBI for employment regulation			Firing costs (weeks of salary)[31]	
Least	**Most**		**Least**	**Most**
Singapore	Panama		Afghanistan – 0	Sudan – 118
United States	Sierra Leone		Denmark – 0	Egypt – 132
Marshal Islands	Angola		Iraq – 0	Equatorial Guinea – 133
Maldives	Congo, Dem. Rep.		Marshal Islands – 0	Mozambique – 134
Georgia	Guinea-Bissau		Micronesia – 0	Ecuador – 135
Tonga	Paraguay		New Zealand – 0	Sri Lanka – 169
Brunei	Equatorial Guinea		Palau – 0	Zambia – 178
Australia	São Tomé and Principe		Puerto Rico – 0	Ghana – 178
Palau	Venezuela		Tonga – 0	Sierra Leone – 189
Denmark	Bolivia		United States – 0	Zimbabwe – 446

4.2. The impact of taxes on informality

The literature frequently cites tax evasion as a key reason for firms to operate informally. Firms evade taxes when they under-report their income or profits in order to evade taxes or fail to pay valued added, sales, real estate or other taxes. Table 4 reports results from the 2008 World Bank DBI database. Nine countries monitored by the World Bank, have laws that require firms to pay more than 100% of their profit in taxes (Argentina, Belarus, Central African Republic, Democratic Republic of the Congo, Sierra Leone, Burundi, and Gambia). Compliance can also be difficult as numerous payments or forms may be required or it may simply take a long time to comply with the law. Studies show that countries with a large informal economy frequently place a high tax burden on businesses in terms of number of taxes, number of tax payments and total tax payments[32]. For example, out of the 181 countries monitored in the DBI database, Venezuela is ranked 174th in terms of number of payments, 173rd in terms of the time it takes to file taxes, and 144th in terms of its total tax rate on profits.

[31] Severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

[32] See the 2008 Doing Business Report, Comparing Regulations in 178 Countries, p. 39.

Table 4. World Bank Research Findings on Taxes

Number of payments per year[33]			Total tax rate (% of profit)[34]	
Lowest	**Highest**		**Lowest**	**Highest**
Maldives – 1	Côte d'Ivoire – 66		Vanuatu – 8.4	Tajikistan – 85.5
Qatar – 1	Serbia – 66		Maldives – 9.1	Uzbekistan – 90.6
Sweden – 2	Venezuela – 70		Qatar – 11.3	Mauritania – 98.7
Hong Kong, China – 4	Jamaica – 72		United Arab Emirates – 14.4	Argentina – 108.1
Norway – 4	Kyrgyz Republic – 75		Kuwait – 14.4	Belarus – 117.5
Singapore – 5	Montenegro – 89		Saudi Arabia – 14.5	Central African Republic – 203.8
Kiribati – 7	Ukraine – 99		Bahrain – 15	Congo, Dem. Rep. – 229.8
Latvia – 7	Uzbekistan – 106		Zambia – 16.1	Sierra Leone – 233.5
Mauritius – 7	Belarus – 112		West Bank and Gaza – 16.8	Burundi – 278.7
Afghanistan – 8	Romania – 113		Botswana – 17.1	Gambia – 292.4

4.3. The impact of government enforcement

Business regulations, labour regulations, and taxes impact the cost and benefit calculations that firms make and ultimately encourage or discourage participation in the formal economy. These factors, however, only form one set of incentives, as the extent to which firms perceive the government to be effective also influences their decisions. Effective government enforcement encourages firms to comply with tax and other regulations. When insufficient resources are dedicated towards audit and collection programs for example, the incentive of firms to evade the rule of law increases, however. Low and inconsistent penalties also encourage such behaviour[35].

Studies find that government effectiveness is related to informality. In particular, perceptions of government ineffectiveness are associated with greater informality while corruption is positively related to it. For example, higher rates of revenue and worker under reporting are correlated with perceptions of corruption[36]. This evidence suggests that firms may either be under reporting revenue or the number of employees in order to hide activities from corrupt government officials or because firms simply don't want to pay taxes and finance an ineffective government. In either case, informality results.

5. Informality reduces productivity

Under normal circumstances, competition ensures that higher productivity firms increase market share at the expense of less productive companies. When competition is working effectively, the market will send clear messages to firms (for example, in the form of the prices they can charge and the profits they can earn) about which goods and services consumers want to buy. Efficient firms offering desirable products at low prices will prosper, and inefficient firms will not[37]. Moreover, research systematically documents that the benefits of increased productivity are often passed on to consumers in the form of lower

33 The total number of payments per year.

34 The total amount of taxes and mandatory contributions payable by the business.

35 Evidence also indicates that penalties and the probability of audit alone cannot fully explain observed levels of tax compliance. Instead social norms seem to play a role (Torgler, 2005). This suggests governments also need to be concerned with the level of tax morale.

36 Perry *et al*. (2007).

37 See Productivity and Competition, An OFT perspective on the Productivity Debate, 2007.

prices, higher quality goods and services or innovative products[38]. Thus, productivity improvements are good for consumer welfare and are normally a key source of competitive advantage for both companies and countries.

Informality, however, can systematically degrade the competitive process through which high productivity, formal firms gain market share and deliver low priced, legally provided, goods and services to consumers. Informal firms can survive and even thrive in markets despite lower productivity precisely because they evade costly regulations and hence substantially reduce their cost structure. Because the cost of supplying goods and services to the market is substantially lower for informal firms, they are not subject to the same competitive pressures that formal firms are and hence are unlikely to exit the market even though formal firms are often substantially more productive. As a result, many observers are deeply concerned that informality reduces productivity within markets and the economy[39].

To help the reader understand the detrimental impact of informality on productivity, this section reviews factors that reduce the productivity of informal firms as well as ways in which informal firms affect the growth of formal firms. It also reviews recent research findings on the productivity of informal firms, many of which document the detrimental effect of informality on productivity and its negative impact on economic growth within developing countries.

5.1. Factors reducing the productivity of informal firms

A number of factors reduce the productivity of informal firms by keeping them artificially small and denying them access to a variety of resources.

- *Failure to achieve economies of scale and scope*. For a variety of reasons, informal firms are often too small to fully exploit scale and scope economies. As a result, small, informal firms often produce output at a high average cost, and in the process fail to exploit efficiency gains from division of labour, thus wasting resources. The reasons for remaining at suboptimal scale include lack of access to capital and credit. Once a firm decides to operate informally, its ability to obtain capital and credit is limited, reducing its ability to invest in projects to grow the business. Investors and banks are less willing to invest in or extend credit to companies that lack proper documentation, such as business registration, licensing documents and tax compliance certificates. They may also require certified financial statements for many years. As a result, small, informal firms often rely on informal sources (personal savings, family members, and friends) or even pawn shops. Such creditors are likely to be able to lend only small amounts of money. Informality can also harm the creditworthiness of large firms. When large firms under-report sales, their attractiveness to potential lenders and their ability to raise equity capital from investors is reduced[40].

- Informal firms may also *want* to stay small in order to avoid detection by the government and the risk of penalties for failing to pay taxes or not complying with various regulations because regulatory enforcement tends to focus on larger firms[41].

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38 Nordhaus (2004) estimates that only 98% of the social value of innovations in the post-war US economy has accrued to consumers.

39 See Lewis (2004), Djankov *et al*. (2002) and www.doingbusiness.org, for example.

40 Reis finds that a 1% increase in the share of informal full-time employees is associated with a 0.3 percent decrease in total factor productivity.

41 Farrell (2004).

- *Employing low productivity workers*. High productivity workers may be attracted to formal employment as it often provides more (required) benefits than informal firms. One study observes that most of the qualified workers were in formal companies that were obligated to provide high benefit packages[42].

- *Reduced capital intensity*. The capital intensity of informal firms is often lower than formal firms because they use less and lower-performing equipment due to their ability to substitute to cheap informal labour. This reduces labour productivity and harms economic efficiency.

- *Inefficient organisation design*. The lack of competitive intensity in markets with extensive informality may lead informal firms to operate inefficiently. Informal firms may employ out-dated, inefficient methods for producing goods and services. For example, construction firms may use the same workers for all parts of the job rather than employing subcontractors. Construction companies may also employ processes that focus too heavily on craftsmanship and not enough on the use of prefabricated materials[43].

- *Limited access to government resources*. Some authors point out that informal firms lack access to services provided by governments (such as infrastructure, banking, training and other services), which adversely affect their productivity[44]. Governments often require firms to be registered in order for firms to take advantage of these programmes.

- *Limited access to courts*. When firms operate informally, their access to the courts and other formal contract enforcement mechanisms is often eliminated or at least greatly reduced. Without access to these mechanisms, informal firms are likely to be concerned about the ability of buyers to pay in full. As a result, they restrict their business activities to an inefficiently small set of trading partners.

- *Greater exposure to corruption*. Informal firms are more vulnerable to corruption than formal firms given the risks of exposure. Formal firms can report corruption to the relevant authorities but informal firms fear that, if they do, they may bring themselves to the attention of the relevant authorities and may thus incur financial or other penalties. They may, therefore, be more willing to pay bribes than formal firms, increasing inefficiency[45].

- *Increased labour flexibility*. But informality may allow firms greater freedom in their labour practices and lead to lower hiring and firing costs. Thus, informal firms may be able to fire unproductive workers more easily than formal firms. They may also be able to increase efficiency by paying workers less than the minimum wage (Almeida and Carneiro, 2005).

5.2. Informality harms formal firms

Economies of scale and scope. A significant concern in the literature is that informal firms are able to offer attractive prices to consumers only because they may fail to register their business, avoid value added and income tax payments, evade labour, product and land regulations, infringe on copyrights, sell illegal

42 See McKinsey Global Institute (1998).

43 See McKinsey Global Institute (1998).

44 Djankov *et al*., (2002).

45 Johnson *et al*. (2000) find that informality is correlated positively with corruption.

smuggled products or provide unlicensed services[46]. If the cumulative cost of complying with a variety of regulations is high, then informal firms that engage in such activities will have a substantial competitive advantage over formal firms in the eyes of consumers. That, in turn, may prevent the entry or expansion of formal firms in the market. When small, informal firms prevent entry or expansion by larger, more productive formal firms, for example, those more productive firms are harmed and resources are wasted[47].

McKinsey Global Institute Studies: Food retailing in Russia

The McKinsey Global Institute (MGI) has studied the impact of informality on productivity in a number of industries. In their study of food retailing productivity in Russia, they found that informal firms are a key obstacle to productivity and output growth[48]. For example, modern food retailing stores in Russia were unable to gain market share from the less productive gastronomes, open-air wholesale market stands, kiosks and pavilions because the latter benefit from lower tax liabilities and often sell illegal imports or counterfeit products. They found that, despite their smaller size, informal firms had a 13 percent cost advantage relative to larger, more productive, formal supermarkets. MGI points out that if the laws had been applied equally to both small, informal firms and large, formal firms then informal retailers would have been deprived of their only source of competitive advantage: their ability to offer low prices. In fact, the informal retailers would have been at a 5% price disadvantage.

In the city of Obninsk, MGI also examined the impact of reducing red tape and the city's decision to implement a more effective tax policy. Their research findings indicated that after the city implemented these changes, modern retailers gained market share quickly and 10% of the gastronomes shut down. Moreover, the remaining retailers upgraded their services through better merchandising and longer opening hours.

Innovation and intellectual property. Informality may also impact the incentives of formal firms to innovate and adopt new technologies or develop brands. Developing new working methods and technologies and investing in methods and technologies developed elsewhere are investments which require foreseeable payoffs. But those payoffs will be less likely given the cost advantages of informal firms. Moreover, in some instances informal firms sell products that infringe on the copyrights of formal firms or sell products that employ illegal patents. Such activities harm the incentives of formal firms to develop intellectual property as they see less gain in it[49].

5.3. Firm level productivity and aggregate growth studies

The World Bank Enterprise Survey Database has been used to determine whether there are productivity differences between firms that were always formal and those that were initially informal but later joined the formal economy. Evidence reported in Figure 2 indicates that after statistically controlling for a variety of factors that impact productivity, firms that start up informally are much less productive than those that were always formal. As the authors of the study put it, "those that start up informally are clearly at the bottom end of the productivity distribution of the corresponding industries and regions. The

46 According to Farrell the ways in which informal firms evade regulations varies by sector. For example, construction firms tend to underreport the number of employees and hours worked (to avoid social security payments) while informal retailers avoid paying value added taxes.

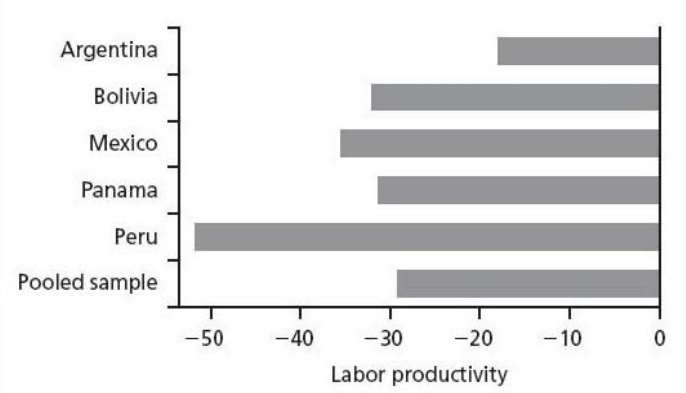
47 The World Bank's Enterprise Survey data for Latin America assesses 6,466 formal manufacturing firms located in 14 Latin American countries. The survey data show that 38.7 percent of the manufacturing firms ranked competition from informal firms as one of the top three obstacles to doing business, ahead of other issues such as tax rates and access to finance. See Gonzalez and Lamanna (2007).

48 See McKinsey Global Institute, Unlocking Economic Growth in Russia, October 1999.

49 Farrell (2004) notes that informal software companies appropriate innovations and copyrights without paying for them, reducing the [formal] industry's productivity and profitability by up to 90%.

difference in labour productivity between those firms and the ones that have always operated formally is 29 percent, on average for seven Latin American and Caribbean countries."[50]

Figure 2. Estimated Impact of Informality on Labour Productivity[51]



Note: The figure reports coefficients on formality indicators in regressions of the log of the output per worker on a dummy for not having formally registered at the time of starting up, controlling for employment size, time in business, and sector and region dummies.

The firm level estimates cited above as well as the studies by the McKinsey Global Institute suggest that there can be significant differences between the productivity of formal and informal firms[52]. These studies indicate that efficiency gains could be derived by transferring production from low-productivity informal firms to more productive formal firms or by facilitating the formalisation of informal firms.

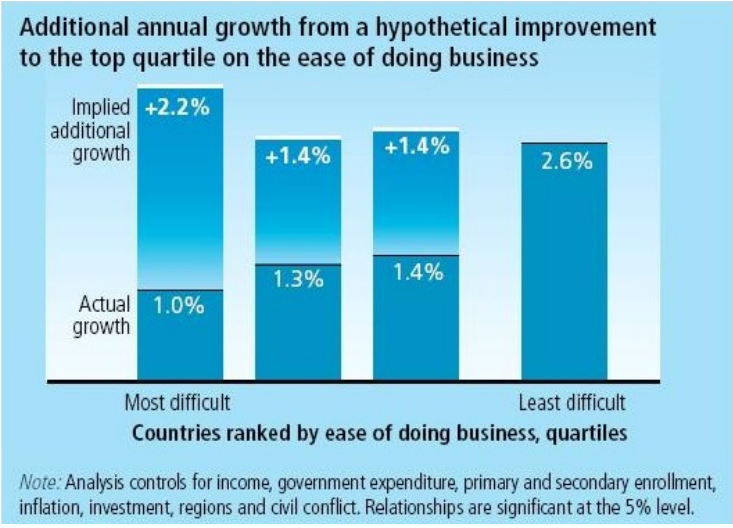
Some macroeconomic studies show that the pay-offs from regulatory reforms are large in terms of annual economic growth. Djankov *et al*. (2004) find that if countries improved all aspects of the DBIs and moved into the top quartile, growth rates would be augmented significantly. Moving countries from the bottom three quartiles to the top quartile of the DBIs is associated with an increase in annual growth rates ranging from 2.2% to 1.4% (See Figure 3).

50 See Perry *et al*. (2008)

51 From Perry *et al*. (2007).

52 For a summary of several McKinsey Global Institute studies see Lewis (2004).

Figure 3. The ease of doing business is associated with more growth[53]



Their study indicates that the gains from regulatory reforms are two-fold. Firstly, businesses benefit from a more simplified regulatory environment, which allows them to redirect resources from regulatory compliance towards their core activities, that is, producing and marketing goods and services. Secondly, governments that lower business obstacles put themselves in the position of spending fewer resources regulating business sectors and can use those same resources to provide better services to citizens.

But, despite the widespread belief that informality hurts economic growth, some recent cross-country empirical studies have produced inconsistent results or statistically insignificant results. For example, Schneider's (statistically significant) estimates indicate that increases in the size of the informal economy are associated with increases in GDP growth rates in both OECD countries and in transition countries, while for developing countries, increases in the informal economy decrease GDP growth rates[54].

In their study of Latin American countries, Perry *et al*. (2007) find that informality decreases the growth rate of GDP. They find that increasing informal economy by 10% lowers aggregate GDP growth rates by 0.6 percent: if informality were reduced by 10%, 10 years later the economy would be 6% larger than it otherwise would be due to the impact on growth alone. Their estimates are not statistically significant at the at the 5 percent level, however.

6. Competition law enforcement and the informal economy

There is little published information about the extent to which informality affects competition law enforcement efforts. Submissions by countries to this roundtable indicate that, in a few instances, legal actions to reduce unfair competition from informal firms have been taken. Competition authorities have been presented with defence arguments asserting that collusion by formal firms was a justified way of

53 From Djankov *et al*. (2004).

54 Schneider (2005) reasons that on the one hand firms may be overburdened by taxes and regulations in high-income countries so that increasing the size of the shadow economy stimulates the official economy through the additional monies that are spent in the official economy. On the other hand, he reasons that in developing countries, increasing the size of the shadow economy erodes the tax base causing a lower provision of public goods and services, such as infrastructure, which consequently negatively impact the official economy.

fighting unfair competition from informal firms. Finally, informal sales have affected the type of data used to define markets and assess market shares. These topics are reviewed in greater detail below.

6.1. Actions by competition authorities to tackle informality

Some competition authorities have taken enforcement actions against what they consider to be overly broad government regulations and excessive and discriminatory pricing practices for mandatory government services. In other instances, competition authorities have advocated for the elimination of tax exemptions or brought enforcement actions against firms that evaded taxes and thus competed unfairly with formal firms. Highlights from three submissions to this roundtable are described below.

- *Ukraine*. The Antimonopoly Committee of Ukraine can take legal actions against governmental bodies within Ukraine, except the national government, parliament and the national bank. For example, in its investigation of government-supplied services related to authorising business activities, it recently identified more than 1,500 violations of national competition law. The violations involved high or discriminatory prices and the imposition of terms and conditions in contracts unrelated to the subject matter of the contract. The Ukraine submission argues that these enforcement actions reduce informality as they reduced the price of required services and placed firms on equal footing, thus, reducing the incentive to operate informally. More than 260 government regulations covering areas such as unlawful prohibitions on, or practical obstacles to, entrepreneurship were eliminated[55]. The ACU argued that the elimination of these restrictions would encourage more firms to operate formally.

- *Bulgaria*. The Bulgarian Commission on Protection of Competition (CPC) carried out a market study of milled wheat, wheat flour, and wheat bread in 2005. The investigation revealed that many bakeries were unregistered and often produced bread in premises that did not meet required standards. The CPC concluded that by not paying VAT on traded wheat, informal firms had an unfair competitive advantage[56]. The CPC advised the State to require all flour producers to register under the VAT law in order to "de-shadow" illegitimate producers and put all market participants on equal footing[57]. The CPC argued that this would result in fewer firms under-reporting income and evading other taxes and obligations.

- *Chile*. The Chilean Competition Commission found in 2000 that a travel agency was guilty of unfair competition because it had failed to pay taxes on airfare tickets sold to the public. The Commission found that the travel agency was financing its low prices by not paying taxes and imposed a fine[58].

6.2. Informality impacts competition enforcement

Enforcement actions that competition authorities can take to combat the informal economy may be limited. The submission from Ukraine provides a striking illustration: the Antimonopoly Committee of Ukraine (ACU) has no powers to take enforcement action against unregistered firms. This means that even

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55 See submission from Ukraine.

56 It is often argued that VAT systems hinder the informal economy as firms need (and seek) invoices from upstream firms to be able to prove to tax auditors that they paid the correct VAT.

57 Prior to the CPC's recommendation, the firms with annual turnover below 50 000 Leva could not be registered under the VAT law. After the CPC came out with its recommendation, the firms with annual turnover below 50 000 Leva were given the possibility for voluntary VAT registration.

58 See submission from Chile.

if a number of unregistered firms formed an otherwise illegal cartel, the ACU would be powerless to stop them.

Although this example is unusual, informality is more likely to impact the way in which an authority assesses a competition issue. Market definition and market share assignments can be difficult even in instances in which informality does not play a role. However, when firms under report sales that can frustrate attempts to calculate market shares accurately or to define the market clearly. More generally, when informal market participants are determined to be part of the antitrust market, their production needs to be accounted for just as one normally does with formal firms. Competition enforcement agencies should also consider whether a distinct antitrust market involving only formal production is likely to exist. For example, price discrimination against consumers who insist on legally produced goods and services may be a concern[59].

The submissions to the roundtable reveal little as to how competition authorities deal with such issues, however. Egypt's submission noted that interviews can be conducted to gather information about informal producers[60], but few submissions focused on actual competition cases and fewer still provided details about how specific problems were handled. Highlights from two reports are described here.

- *Bulgaria*. Recently the Bulgaria CPC assessed a merger of two ready-mix concrete producers. Concerns about unrecorded sales and the lack of official statistics raised issues about market definition and market share calculations. The CPC attempted to use various inputs to calculate and assess the market shares of concrete producers. In particular, it attempted to use data on sales of cement and other inert materials to assess the merits of the merger. The CPC determined that sales information from national producers of cement to concrete producers in the region provided relatively detailed information on the total consumption of cement in the region and allowed the CPC to assign market shares to various producers[61].

- *Turkey*. The Turkish Competition Authority (TCA) has investigated numerous cases in which informality played a role. In one instance, the base price for bread and pita was jointly determined by producers, allegedly to combat unfair competition from informal producers. The TCA rejected these arguments and found that the determination of a base price was not necessary to prevent informality. In another instance involving waste accumulators, the TCA rejected the argument that competition was not harmed when informal firms were affected by the anticompetitive actions of formal firms[62].

7. Increasing competition by reducing the size of the informal economy

This part of the Note highlights areas where policy makers could target efforts to reduce the size of the informal economy, by reducing the costs of entering the formal sector and increasing the benefits of operating formally. By taking a measured but determined approach (especially where it is extensive), governments will be able to increase productivity and competition. Often that means that policy makers need to work on several fronts in order to reduce significantly the size of the informal economy.

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59 The submission from the United States indicates that the Department of Justice cleared a joint-venture between two major record companies based in part on the well-publicized size of the informal sector in the music industry.

60 See submission from Egypt.

61 See submission from Bulgaria.

62 See submission from Turkey.

7.1. Reducing the costs of formality increases productivity and the level of competition

Implement comprehensive regulatory review programmes. In order to enhance productivity within the economy and better harness the benefits of vigorous competition, governments could consider implementing comprehensive regulatory review programmes[63]. The APEC-OECD Integrated Checklist on Regulatory Reform could be used as part of a regulatory reform program. The APEC-OECD Checklist highlights key issues that could be considered in evaluating existing laws and regulations or that could be considered when developing regulatory policies. Because the general goal of regulatory impact assessment is better regulation, rather than less regulation *per se*, it can significantly lower the costs of formality and in turn encourage informal firms to join the formal economy or help firms that are already part of the formal economy stay there. Broad based efforts are likely to pay especially high dividends, as old, inefficient and costly regulations are replaced by well reasoned policies which in turn, if combined with rigorous enforcement of competition legislation to tackle overt anti-competitive behaviour, will invigorate competition in the formal economy by encouraging entry and investment.

Reduce product market distortions. Government restrictions on markets can significantly reduce competition and productivity. Policies that place firms on equal footing can increase competitive intensity and productivity. Competition and industry level productivity can be harmed however, when policies are adopted that establish special advantages for certain firms. For example, government policies that restrict the trading hours of firms according to size, establish licensing or product selling restrictions, create different tax rates or exemptions for firms selling the same product, or establish zoning restrictions, may protect small, informal firms from competition from larger, more productive, and more efficient, firms.

Governments could consider using the OECD Competition Assessment Toolkit to help increase competition and productivity. The Toolkit provides a general methodology for identifying unnecessary regulatory restraints and developing alternative, less restrictive policies that still achieve government objectives[64]. Competition authorities can play an important role in this process by helping government bodies identify existing regulations that unnecessarily restrict competition or helping policy makers design new regulations that hinder competition as little as possible yet still achieve their policy goals.

Reduce or eliminate excessive labour regulations. Overly burdensome labour regulations raise the cost of employing official workers and reduce labour market flexibility. They also impact the ability of local firms to compete with low cost imports, which further reduces labour employment in the formal economy[65]. Consequently, governments could target their reviews on labour regulations, an area often discussed in the informal economy literature. Excessively high minimum wage laws, for example, can reduce employment in the formal economy. Regulations that require firms to offer contracts of indefinite duration or that are unduly inflexible and unresponsive to specific market situations can push firms to hire 'off-the-books' or not at all. Firing costs also need to be reduced in many countries, especially those in Africa. To help reduce employment costs, Spain allowed employers and employees to negotiate the terms of employment contracts directly rather than having them dictated by labour regulations. It also liberalised rules for temporary work and for temporary employment agencies[66]. Australia, Georgia, Greece and Lithuania recently took steps to reduce regulations on overtime work. Argentina, Armenia, Georgia, and

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63 Djankov *et al*. describe the regulatory review programs implemented by Australia, Czech Republic, Hungary, Korea, Mexico and Poland. See www.oft.gov.uk/shared_oft/reports/comp_policy/oft876.pdf for an example from the United Kingdom.

64 See www.oecd.org/competition.

65 There is, though sometimes a fine distinction between a legitimate requirement to deal with perceived employment issues and what may be regarded as 'overly burdensome'.

66 See Capp, Elstrodt, and Jones (2005).

FYR Macedonia either decreased the mandatory notice period for firing workers or reduced severance pay. Such programmes encourage firms to employ labour more fully and hence increase job creation in the formal economy.

Reduce overly burdensome tax systems. When making investment decisions, firms focus on after-tax profit rates of return. Overly burdensome tax systems therefore impede productivity-improving capital investments and hence impact levels of innovation and thus competition. In 2005/06, at least 23 countries reduced the rates for taxes on profits. Many others made efforts to reduce the total number of taxes, simplified the tax code or introduced online electronic filing. Egypt, for example, recently required all businesses to pay a 20% profit tax – rather than 32% or 40% depending on the sector. It also eliminated all tax holidays and exemptions specific to sectors and locations (roughly 3,000 in all) and introduced electronic filing as well. As a result of these changes, the number of tax filings doubled in just one year[67]. Tax systems that are simple also help. They make it easier for firms to comply with the law and allow them to reallocate resources away from tax compliance and towards other higher priority areas. To help small businesses comply with their tax obligations, Brazil implemented the SIMPLES programme in 2001. This programme consolidates eight separate tax payments and allows for one monthly tax payment. The SIMPLES programme is credited with having increased business registration in the retail sector by 13% compared with the year before the programme started.

Reduce the total impact of overly burdensome fees. Removing obstacles to starting a business are pertinent to successful reform. Governments collect fees from businesses for many good reasons - ensuring the health and safety of employees or ensuring environmental compliance regulations, for example. Because the cumulative impact of required fees can be high, governments could consider taking steps to ensure that the total impact is not overly onerous, pushing firms towards the informal economy or keeping them from joining the formal economy in the first place. High fees for simply carrying on business operations can also reduce investment, innovation and competitiveness. To help allay these concerns, Belgium recently eliminated its business registration fee and Georgia reduced its capital requirement by 90%. Benin and Niger also recently eliminated the requirement for companies to prepay taxes before starting operations[68].

Streamline administrative processes. Long delays and costly procedures for establishing a formal business are obstacles that firms must overcome if they want to join the formal economy. In some economies only the most determined entrepreneur will be able to register a business (it takes 152 days in Brazil)[69]. Well grounded competition policies recognise that promoting easy entry and exit encourages vigorous competition in markets and encourages productivity-improving investments. Particularly in concentrated markets, governments should take steps to reduce the barriers to enter the formal economy. To help ease entry and exit by firms, Governments should consider taking steps to ensure that administrative processes are streamlined. "One-stop shops" that use internet-based technologies, such as those in Singapore, can significantly ease business registration costs. "One-stop shops" can combine company registration with tax, social security and labour registration, and licence requirements at a single access point. On-line processes render face-to-face interactions unnecessary, significantly reducing the ability of corrupt officials to skew the process. According to the World Bank, more than 25% of the reforms made around the world in the last five years relate to regulations on the starting of a business. Further evidence from the World Bank indicates that after reforms were implemented new entry increased

67 World Bank (2007).

68 World Bank (2007).

69 See 2008 doing business database at www.doingbusiness.org.

by 78% in FYR Macedonia, 55% in Georgia, and 25% in Lithuania[70]. The box below provides examples of successful recent reforms[71].

One-stop shops in Azerbaijan and Portugal

Both Azerbaijan and Portugal simplified the process for starting a business in the formal economy.

Prior to 2008, entrepreneurs looking to start a business in Azerbaijan had to register at five different agencies, complete 15 procedures, and file 33 documents. On average this process took more than 60 days to complete. After a sweeping reform was instituted in January 2008, business need submit only seven documents and complete six procedures at the new one-stop State Business Registry.

Portugal experienced a similar transformation. Prior to 2005 it took 78 days to start a business in Portugal. An entrepreneur needed to complete 11 procedures and 20 forms and business registration costs came to almost €2,000. In 2005 the Portuguese government introduced a one-stop shop system to set up a company and now Portugal is one of the easiest countries in the world to start a business as it takes only six days on average and registration costs amount to €600.

Online registration system in Singapore

In Singapore, thousands of businesses and companies are formed every year and before 2003 the process was long, tedious, and too dependent on manual data entry, leading to dissatisfaction and delays. To make operations more efficient and to improve service delivery, Singapore introduced Bizfile, an Internet-based online registration, filing, and information retrieval system. This initiative was part of the government's plan to increase the use of information technology, bringing as many public services online as possible, thereby improving customers' experiences. Information can now be updated within half an hour of a successful filing, rather than the 14-21 days before reform. The time to register a new business has fallen from 24 hours to 15 minutes, and the time to incorporate a company from five days to just 15 minutes. Bizfile also generates costs savings for the administration that have been passed on to the businesses through lower registration fees. The fees to register a new business dropped from S$100 to S$50; those to incorporate a new company, from S$1,200–$35,000 to a flat rate of S$300. Bizfile cut the annual fee to renew a business registration from S$25 to S$20.

Provide readily accessible business guidance. Governments should consider reviewing the ways in which they provide guidance on how different types of businesses can formalise their activities. Providing information at different places (for example, different buildings or different websites) is likely to be unhelpful. Governments should not assume that businesses will be able to locate information easily but rather should consider their ability to centralise and provide, in readily accessible formats, all necessary requirements for various types of business to formalise their activities. Centralising information may reduce the possibility that corruption will impact the system.

7.3. Additional ways to increase productivity and competition and reduce informality

Increase competition and productivity through procurement programs. Public procurement programs present significant opportunities for firms to do business, as public procurement often accounts for more than 15% of GDP. Because governments often have company registration requirements, procurement program can be used to encourage firms to register their business, operate formally, and make productivity-enhancing investments. Consequently, governments should take all appropriate steps to lower registration costs and facilitate access to procurement opportunities, through internet-based technologies for example and by avoiding unnecessary restrictions which reduce the number of qualified bidders. Governments should also consider privatising their procurement needs where appropriate. Governments and consumers both benefit from this process. Governments see reduced procurement costs and higher tax revenues from newly registered businesses. Consumers benefit as the goods and services sold to governments are also

70 See Celebrating Reform 2008, Doing Business Case Study, p. 2.

71 See Celebrating 2008, Doing Business Case Study.

frequently purchased on the open market. Ultimately, more vigorous and healthy competition is likely to result from comprehensive initiatives[72].

Enhance access to capital. Access to capital is a key input in well-functioning, competitive economies. When access to capital is unnecessarily restricted, it can substantially reduce productivity, innovation and competition in markets and impact the incentive to operate formally. Access to credit can be increased by improving collateral laws and enforcement powers and enhancing credit information. Good collateral laws and credit information can help boost productivity by helping deserving firms gain access to credit. More businesses will be able to obtain more credit by expanding the kind of assets that firms can potentially use as collateral. Often this is a particularly important issue to small micro businesses and to informal firms. Indeed, by increasing access to credit, informal firms will see greater value in becoming formal. Countries can also take steps to improve the amount of information available through credit systems as well as the quality of the information. The Dominican Republic recently abolished its requirement of consumer consent for giving data to credit bureaux. At the same time, it also implemented a new data verification procedure to allow consumers to verify their credit histories. Similarly, El Salvador recently guaranteed consumer access to credit data[73]. Access to credit can also be improved by eliminating caps on interests rates as high risk small businesses may simply not get the loans they need, thus encouraging them to turn other informal sources.

Strengthen tax and regulatory enforcement. Evidence from Latin America suggest that a key reason firms join the formal economy is to avoid fines and because of a general desire to comply with the law[74]. This suggests that strengthening audit and tax collection programs could reduce informality. Strong penalties are also a significant deterrent to tax evasion. The United States and Italy impose significant fines on violators and index fines for tax evasion to the violator's earnings. The US has also increased criminal responsibility for tax accountants in tax evasion cases and Italy has established fines for auditors who accept products and services without a receipt. Similar efforts to bolster enforcement efforts in other areas of regulation could be undertaken. Governments should also consider linking computer information databases among various auditing branches. Chile recently boosted coordination between the internal revenue and customs administrations, as well as with the Treasury. It also set up a large taxpayers unit and strengthened penalties. As a result of these efforts, the value added tax evasion rate dropped from 20% in 2000 to 11% in 2005/06[75]. Likewise, the United Kingdom merged its Inland Revenue and HM Customs and Excise Departments to form HMRC in 2005. VAT exemptions for small business can have perverse results in that they can encourage a type of informality in some instances. This occurs when entrepreneurs close a business to avoid paying VAT, but then open a new business in another name[76].

Different sectors potentially require different methods. In some industries such as banking, steel and telecommunications, informality is often the exception and not the rule. In those industries it may be better to focus on tax compliance programmes aimed at firms which under-report sales. However, in other industries, such as retailing and residential construction, informality is much more common. In such instances, broader programs aimed at reducing informality may be required. Poland, for example, launched a program that combined equal taxation for traditional and modern retailers with the allocation of

72 In addition to procurement programs, government sponsored training programs or programs that provide legal services to small business could be expanded.

73 World Bank (2007).

74 See Perry *et al*., (2007).

75 OECD (2008), Tackling Business and Labour Informality in Chile.

76 See the Lithuanian submission for an example involving taxi companies. In this instance, taxi firms closed their business and opened a new one when they approached the VAT threshold. This practice negatively impacted formal taxi companies.

substantial resources for reducing tax evasion. In response, foreign direct investment into the modern retailing sector substantially increased[77].

Promote reform efforts. Implementation of reforms should ideally be allied with promotional campaigns aimed at informing businesses about their efforts and with post-implementation monitoring and assessment of the impact of the reforms. For example, El Salvador held two events, which were attended by the President and Vice President, thus helping increase media coverage and promoting reform efforts[78]. Hungary held "deregulation days" and also arranged a national contest in which prizes were awarded for useful ideas from the public[79].

8. Conclusion

In the long run, consumers and firms are better off and government efficacy is improved when informality is reduced. The main reason for this is that informality reduces productivity and innovation in markets. Research indicates that informality reduces aggregate economic output and harms economic growth in developing countries.

Submissions to this roundtable indicate that few competition authorities have successfully used enforcement tools to tackle competition concerns involving the informal economy. This suggests that other enforcement issues should take priority; establishing competition law infringements is overly challenging and/or enforcement actions are likely to have a low deterrent effect. Competition authorities should consider, therefore, focusing their efforts on competition advocacy aimed at reducing the size of the informal economy as part of wider government initiatives.

Extensive evidence described in the paper indicates that governments can reduce the size of the informal economy and that measured, persistent efforts are likely to be rewarded. A number of governments have already successfully taken steps to reduce overly burdensome tax, labour and product regulations and have streamlined administrative processes for setting up and operating businesses. Aside from the potential effect of these initiatives on the competitive process, they can only have acted as incentives for firms to join, or to stay in, the formal economy.

When developing appropriate policy responses for reducing the informal economy, governments should prioritise their efforts on those industries most affected by informality and tackle them on a sector-specific basis. Governments should also prioritise their efforts on those cross-sector regulations that have the effect of encouraging informality. The World Bank's Doing Business Indicators may provide a useful tool for the latter. Effective policy responses must balance the long-term goals of productivity gains and increased competition in markets, with any short-term adjustment costs, such as increased unemployment and significantly reduced consumer spending. This may be particularly relevant for countries with a large informal economy.

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77 See Capp, Elstrodt and Jones (2005).

78 See World Bank (2007).

79 See Djankov *et al*., (2004).

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APPENDIX A

ESTIMATES OF THE SIZE OF THE SHADOW ECONOMY

The following table presents estimates of the size of the shadow economy for 110 economies from Schneider (2005) and the annual GDP growth rate for the year 2000.

Economy	Shadow Economy 2000	GDP Growth Rate 2000
Albania	33.4	9.15
Algeria	34.1	5.05
Argentina	25.4	1.77
Armenia	46.3	8.16
Australia	15.3	4.21
Austria	10.2	5.34
Azerbaijan	60.6	20.37
Bangladesh	35.6	8.58
Belarus	48.1	8.30
Belgium	23.2	6.13
Benin	45.2	8.42
Bolivia	67.1	5.04
Bosnia and Herzegovina	34.1	0.00
Botswana	33.4	-2.06
Brazil	39.8	7.68
Bulgaria	36.9	9.30
Burkina Faso	38.4	4.66
Cameroon	32.8	8.45
Canada	16.4	6.17
Chile	19.8	8.51
China	13.1	9.92
Colombia	39.1	1.04
Costa Rica	26.2	-0.37
Côte d'Ivoire	39.9	0.77
Croatia	33.4	5.96
Czech Republic	19.1	5.47
Denmark	18.2	6.34
Dominican Republic	32.1	9.86
Ecuador	34.4	3.98
Egypt, Arab Rep.	35.1	7.73
Ethiopia	40.3	8.01
Finland	18.3	7.91
France	15.3	5.32
Georgia	67.3	8.20

Economy	Shadow Economy 2000	GDP Growth Rate 2000
Germany	16.3	5.24
Ghana	38.4	7.03
Greece	28.6	7.18
Guatemala	51.5	6.03
Honduras	49.6	6.52
Hong Kong, China	16.6	14.26
Hungary	25.1	7.63
India	23.1	6.35
Indonesia	19.4	6.96
Iran, Islamic Rep.	18.9	7.14
Ireland	15.8	15.67
Israel	21.9	10.64
Italy	27.0	5.25
Jamaica	36.4	4.10
Japan	11.3	4.78
Jordan	19.4	4.57
Kazakhstan	43.2	16.14
Kenya	34.3	1.82
Korea, Rep.	27.5	10.43
Kyrgyz Republic	39.8	7.70
Latvia	39.9	7.87
Lebanon	34.1	2.03
Lithuania	30.3	5.52
Madagascar	39.6	8.06
Malawi	40.3	4.25
Malaysia	31.1	14.61
Mali	41.0	6.86
Mexico	30.1	9.09
Moldova	45.1	1.56
Mongolia	18.4	3.88
Morocco	36.4	2.60
Mozambique	40.3	4.89
Nepal	38.4	8.62
Netherlands	13.0	5.94
New Zealand	12.7	4.86
Nicaragua	45.2	7.25
Niger	41.9	2.45
Nigeria	57.9	6.89
Norway	19.1	4.45
Pakistan	36.8	7.05
Panama	64.1	2.27
Peru	59.9	5.31
Philippines	43.4	6.28
Poland	27.6	6.32
Portugal	22.6	6.00

Economy	Shadow Economy 2000	GDP Growth Rate 2000
Romania	34.4	3.74
Russian Federation	46.1	8.81
Saudi Arabia	18.4	8.86
Senegal	43.2	8.08
Singapore	13.1	13.76
Slovak Republic	18.9	4.90
Slovenia	27.1	7.24
South Africa	28.4	5.58
Spain	22.6	6.30
Sri Lanka	44.6	8.73
Sweden	19.1	6.17
Switzerland	8.8	5.37
Syrian Arab Republic	19.3	7.52
Tanzania	58.3	7.00
Thailand	52.6	5.18
Tunisia	38.4	7.42
Turkey	32.1	10.05
Uganda	43.1	5.90
Ukraine	52.2	8.48
United Arab Emirates	26.4	0.00
United Kingdom	12.6	5.97
United States	8.7	7.44
Uruguay	51.1	1.24
Uzbekistan	34.1	7.86
Venezuela, RB	33.6	5.06
Vietnam	15.6	7.93
Yemen, Rep.	27.4	12.64
Yugoslavia, Fed. Rep.	29.1	0.00
Zambia	48.9	4.86
Zimbabwe	59.4	-5.58

APPENDIX B

THE OVERALL DOING BUSINESS RANK AND INDICATORS ON THE EASE OF STARTING A BUSINESS FROM THE WORLD BANK'S DOING BUSINESS INDICATOR DATABASE.

Economy	Overall rank – Ease of doing business[80]	Starting a business			
		Procedures[81] (number)	*Duration (days)*	*Cost (% of GNI[82] per capita)*	*Paid in minimum capital (% of GNI per capita)[83]*
Afghanistan	162	4	9	59.5	0
Albania	86	6	8	25.8	32.3
Algeria	132	14	24	10.8	36.6
Angola	168	8	68	196.8	39.1
Antigua and Barbuda	42	8	21	11.6	0
Argentina	113	15	32	9	3.7
Armenia	44	9	18	3.6	2.3
Australia	9	2	2	0.8	0
Austria	27	8	28	5.1	52.8
Azerbaijan	33	6	16	3.2	0
Bahamas, the	55	7	31	9.8	0
Bahrain	18	7	9	0.6	210.1
Bangladesh	110	7	73	25.7	0
Belarus	85	8	31	7.8	12.4
Belgium	19	3	4	5.2	19.9
Belize	78	9	44	51.1	0
Benin	169	7	31	196	347
Bhutan	124	8	46	8.5	0
Bolivia	150	15	50	112.4	2.8
Bosnia and Herzegovina	119	12	60	30.8	36.3
Botswana	38	10	78	2.3	0
Brazil	125	18	152	8.2	0

80 For each economy the index is calculated as the ranking on the simple average of its percentile rankings on each of the 10 topics covered in Doing Business 2009.

81 A procedure is defined as any interaction of the company founder with external parties. As this definition is quite complex, interested readers should consult the Doing Business website.

82 GNI stands for Gross National Income.

83 The paid-in minimum capital requirement reflects the amount that the entrepreneur needs to deposit in a bank or with a notary before registration and up to three months following incorporation and is recorded as a percentage of the country's income per capita.

Economy	Overall rank – Ease of doing business[80]	Starting a business			
		Procedures[81] (number)	*Duration (days)*	*Cost (% of GNI[82] per capita)*	*Paid in minimum capital (% of GNI per capita)[83]*
Brunei	88	18	116	9.2	0
Bulgaria	45	4	49	2	47.8
Burkina Faso	148	5	16	62.3	458.8
Burundi	177	11	43	215	0
Côte d'Ivoire	161	10	40	135.1	215.9
Cambodia	135	9	85	151.7	43.9
Cameroon	164	13	37	137.1	188
Canada	8	1	5	0.5	0
Cape Verde	143	12	52	35.7	47.5
Central African Republic	180	10	14	232.3	513.9
Chad	175	19	75	175	365.1
Chile	40	9	27	7.5	0
China	83	14	40	8.4	158.1
Colombia	53	9	36	14.1	0
Comoros	155	11	23	188.6	280.8
Congo, Dem. Rep.	181	13	155	435.4	0
Congo, Rep.	178	10	37	106.4	131.2
Costa Rica	117	12	60	20.5	0
Croatia	106	8	40	11.5	16.6
Czech Republic	75	8	15	9.6	31.8
Denmark	5	4	6	0	40.1
Djibouti	153	11	37	200.2	514
Dominica	74	5	14	25.5	0
Dominican Republic	97	8	19	19.4	0
Ecuador	136	14	65	38.5	12.7
Egypt	114	6	7	18.3	2
El Salvador	72	8	17	49.6	3.5
Equatorial Guinea	167	20	136	101.7	15.4
Eritrea	173	13	84	102.2	396.7
Estonia	22	5	7	1.7	23.7
Ethiopia	116	7	16	29.8	693.6
Fiji	39	8	46	25.2	0
Finland	14	3	14	1	7.4
France	31	5	7	1	0
Gabon	151	9	58	20.3	30.2
Gambia, the	130	8	27	254.9	0
Georgia	15	3	3	4	0
Germany	25	9	18	5.6	42.2
Ghana	87	9	34	32.7	16.6
Greece	96	15	19	10.2	19.6
Grenada	84	6	20	30.2	0
Guatemala	112	11	26	50.6	26.3

Economy	Overall rank – Ease of doing business[80]	Starting a business			
		Procedures[81] (number)	*Duration (days)*	*Cost (% of GNI[82] per capita)*	*Paid in minimum capital (% of GNI per capita)[83]*
Guinea	171	13	41	135.7	476.9
Guinea-Bissau	179	17	233	257.7	1,015.00
Guyana	105	8	40	68.4	0
Haiti	154	13	195	159.6	26.6
Honduras	133	13	20	52.6	20
Hong Kong, China	4	5	11	2	0
Hungary	41	4	5	8.4	10.8
Iceland	11	5	5	2.6	13.6
India	122	13	30	70.1	0
Indonesia	129	11	76	77.9	74.2
Iran	142	8	47	4.6	1
Iraq	152	11	77	150.7	59.1
Ireland	7	4	13	0.3	0
Israel	30	5	34	4.4	0
Italy	65	6	10	18.5	9.7
Jamaica	63	6	8	7.9	0
Japan	12	8	23	7.5	0
Jordan	101	10	14	60.4	24.2
Kazakhstan	70	8	21	5.2	15.9
Kenya	82	12	30	39.7	0
Kiribati	79	6	21	64.6	34.9
Korea	23	10	17	16.9	53.8
Kuwait	52	13	35	1.3	81.7
Kyrgyz Republic	68	4	15	7.4	0.4
Laos	165	8	103	14.1	0
Latvia	29	5	16	2.3	16.9
Lebanon	99	5	11	87.5	57
Lesotho	123	7	40	37.8	14.5
Liberia	157	8	27	100.2	0
Lithuania	28	7	26	2.7	35.9
Luxembourg	50	6	26	6.5	21.3
Macedonia, FYR	71	7	9	3.8	0
Madagascar	144	5	7	11	289.8
Malawi	134	10	39	125.9	0
Malaysia	20	9	13	14.7	0
Maldives	69	5	9	11.5	4.8
Mali	166	11	26	121.5	390.4
Marshall Islands	93	5	17	17.3	0
Mauritania	160	9	19	33.9	422.6
Mauritius	24	5	6	5	0
Mexico	56	9	28	12.5	11
Micronesia	126	7	16	137.5	0

Economy	Overall rank – Ease of doing business[80]	Starting a business			
		Procedures[81] (number)	*Duration (days)*	*Cost (% of GNI[82] per capita)*	*Paid in minimum capital (% of GNI per capita)[83]*
Moldova	103	9	15	8.9	13.4
Mongolia	58	7	13	4	58.5
Montenegro	90	15	21	4.4	0
Morocco	128	6	12	10.2	52.3
Mozambique	141	10	26	22.9	122.5
Namibia	51	10	66	22.1	0
Nepal	121	7	31	60.2	0
Netherlands	26	6	10	5.9	51.7
New Zealand	2	1	1	0.4	0
Nicaragua	107	6	39	121	0
Niger	172	11	19	170.1	702.1
Nigeria	118	8	31	90.1	0
Norway	10	6	10	2.1	21
Oman	57	7	14	3.6	461.2
Pakistan	77	11	24	12.6	0
Palau	91	8	28	4.6	12.2
Panama	81	7	13	19.6	0
Papua New Guinea	95	8	56	23.6	0
Paraguay	115	7	35	67.9	0
Peru	62	10	65	25.7	0
Philippines	140	15	52	29.8	6
Poland	76	10	31	18.8	168.8
Portugal	48	6	6	2.9	34.3
Puerto Rico	35	7	7	0.8	0
Qatar	37	6	6	9.1	75.4
Romania	47	6	10	3.6	1.1
Russian Federation	120	8	29	2.6	2.2
Rwanda	139	8	14	108.9	0
São Tomé and Principe	176	10	144	88.9	0
Samoa	64	9	35	39.8	0
Saudi Arabia	16	7	12	14.9	0
Senegal	149	4	8	72.7	236.2
Serbia	94	11	23	7.6	6.9
Seychelles	104	9	38	8.3	0
Sierra Leone	156	7	17	56.2	0
Singapore	1	4	4	0.7	0
Slovakia	36	6	16	3.3	30.4
Slovenia	54	5	19	0.1	46.8
Solomon Islands	89	7	57	53.6	0
South Africa	32	6	22	6	0
Spain	49	10	47	14.9	13.1
Sri Lanka	102	4	38	7.1	0

Economy	Overall rank – Ease of doing business[80]	Starting a business			
		Procedures[81] (number)	*Duration (days)*	*Cost (% of GNI[82] per capita)*	*Paid in minimum capital (% of GNI per capita)[83]*
St. Kitts and Nevis	67	8	45	12.5	0
St. Lucia	34	6	20	22.6	0
St. Vincent and the Grenadines	66	8	12	26.8	0
Sudan	147	10	39	50.8	0
Suriname	146	13	694	125.2	0.8
Swaziland	108	13	61	35.1	0.6
Sweden	17	3	15	0.6	30.3
Switzerland	21	6	20	2.1	27.6
Syria	137	8	17	18.2	4,353.80
Taiwan, China	61	8	42	4.1	177.4
Tajikistan	159	13	49	27.6	216.8
Tanzania	127	12	29	41.5	0
Thailand	13	8	33	4.9	0
Timor-Leste	170	10	83	6.6	331.1
Togo	163	13	53	251.3	559.9
Tonga	43	4	25	9.6	0
Trinidad and Tobago	80	9	43	0.9	0
Tunisia	73	10	11	7.9	0
Turkey	59	6	6	14.9	10.9
Uganda	111	18	25	100.7	0
Ukraine	145	10	27	5.5	174.2
United Arab Emirates	46	8	17	13.4	311.9
United Kingdom	6	6	13	0.8	0
United States	3	6	6	0.7	0
Uruguay	109	11	44	43.5	0
Uzbekistan	138	7	15	10.3	17.7
Vanuatu	60	8	39	54.8	0
Venezuela	174	16	141	26.8	0
Vietnam	92	11	50	16.8	0
West Bank and Gaza	131	11	49	69.1	56.1
Yemen	98	7	13	93	0
Zambia	100	6	18	28.6	1.5
Zimbabwe	158	10	96	432.7	3.4

NOTE DU SECRETARIAT

1. Introduction

Pourquoi les autorités de la concurrence devraient-elles se soucier de « l'économie informelle » qui, en dépit des difficultés de définition et de mesure, est largement présente dans de nombreux pays ? Est-ce parce que les entreprises non déclarées livrent une concurrence déloyale aux entreprises qui respectent la législation et paient leurs impôts ? Parce que certaines entreprises informelles vendent des produits de contrefaçon ou illégaux ? Parce que, dans certains cas, la présence d'entreprises informelles peut compliquer la mesure du pouvoir de marché détenu par les entreprises formelles ? Ce sont des questions importantes qui seront traitées dans le présent document, mais il en existe une autre : les entreprises informelles réduisent la productivité globale et donc le potentiel de croissance des économies. En outre, le secteur informel est plus étendu dans les économies moins développées, précisément celles qui ont le plus besoin d'un surcroît de productivité et de croissance.

Les entreprises opérant dans le secteur informel « font concurrence » aux entreprises formelles plus productives en échappant à l'impôt, au droit du travail et aux réglementations relatives aux produits, en fournissant des services non autorisés ou en vendant des produits de contrefaçon ou de contrebande. Ces pratiques abaissent artificiellement les coûts d'approvisionnement des entreprises non déclarées et leur procurent un avantage indu par rapport aux entreprises déclarées. Ces dernières risquent de se retrouver dans l'incapacité de s'implanter ou de se développer sur un marché parce qu'elles ne peuvent pas pratiquer des prix suffisamment bas pour attirer de nombreux consommateurs. Les entreprises détentrices de droits de propriété intellectuelle peuvent être particulièrement touchées, car leurs concurrentes non déclarées profiteront probablement de leurs investissements en réalisant des copies de films, musiques, logiciels et livres ; néanmoins, les entreprises informelles menacent la viabilité des entreprises formelles plus productives dans de nombreux secteurs.

L'impact des entreprises informelles sur la productivité des marchés est fortement négatif. De nombreuses études attestent de ces effets sur la productivité et des recherches récentes concluent que l'efficience des entreprises informelles est en moyenne 30 % plus faible que celle des entreprises formelles. Néanmoins, les entreprises informelles peuvent rivaliser avec des entreprises formelles plus productives précisément parce qu'elles se soustraient au droit. Les responsables de la politique de la concurrence ne doivent guère attribuer de vertu à ce type de concurrence car, à terme, elle est préjudiciable à l'économie. De fait, des recherches révèlent que le secteur informel réduit la production économique globale et freine la croissance des pays en développement.

Bien que certaines autorités de la concurrence se soient attaquées au travail non déclaré, les contributions à cette table ronde indiquent qu'elles ne l'ont fait que dans un nombre limité de cas. Elles se sont employées à supprimer les réglementations publiques trop pesantes et les pratiques de tarification excessives et discriminatoires des services relevant du monopole de l'État, éliminer les exemptions juridiques favorables au secteur informel et s'attaquer aux entreprises qui se soustraient à l'impôt et qui livrent une concurrence déloyale aux entreprises formelles.

Ce document n'appelle pas de ses vœux un renforcement des mesures d'application du droit de la concurrence pour lutter contre l'économie informelle. Néanmoins, les autorités de la concurrence pourraient utilement inciter les pouvoirs publics de leur pays à s'attaquer aux causes sous-jacentes de

l'existence de l'économie informelle en plaidant en faveur d'initiatives publiques de grande ampleur visant à améliorer diverses réglementations qui influent sur les entreprises et sur la concurrence. Par exemple, elles peuvent demander de réformer des réglementations trop contraignantes dans les domaines du travail, des produits et de la fiscalité qui incitent les entreprises à mener des activités souterraines. De même, des règles inefficientes sur l'enregistrement des sociétés qui imposent des procédures coûteuses et longues (souvent plus de deux mois) favorisent le développement du travail non déclaré. Les règlements qui restreignent explicitement la concurrence (comme les restrictions des horaires d'ouverture ou les lois sur la vente à perte) protègent les petites entreprises informelles de la concurrence d'entreprises formelles plus productives. En suivant une approche mesurée mais déterminée (surtout si le secteur informel est très développé), les pouvoirs publics peuvent réduire le désavantage en termes de coûts supporté par les entreprises formelles et les aider à se développer sur le marché, améliorant ainsi la concurrence et la productivité. À long terme, entreprises et consommateurs en tireront profit et l'efficacité de l'action des pouvoirs publics s'en trouvera renforcée.

Les principales conclusions de ce document sont les suivantes :

- Nonobstant le débat sur la définition de l'entreprise informelle, des mesures raisonnables estiment que la taille de l'économie informelle est importante dans de nombreux pays en développement, puisqu'elle génère souvent plus de la moitié de leur PIB. En revanche, dans les pays industriels, elle ne représenterait que 15 % du PIB. Les chercheurs constatent également que le travail non déclaré progresse à la fois dans les pays en développement et dans les pays industrialisés.

- Les entreprises formelles sont plus productives que celles informelles, en raison d'économies d'échelle et de gamme, de leur accès au capital et à la technologie et de méthodes de production et de distribution plus performantes. Des recherches montrent que le transfert de la production d'entreprises non déclarées et peu productives vers des entreprises déclarées plus productives ou la régularisation d'entreprises non déclarées pourrait générer des gains de productivité considérables. Elles révèlent également que la croissance économique dans les pays en développement serait considérablement accélérée si le secteur informel régressait.

- Les entreprises déclarées sont pénalisées par un cercle vicieux de taux d'imposition plus élevés en raison de la présence de nombreuses entreprises informelles. L'informalité érode l'assiette fiscale et entraîne une hausse des prélèvements sur le secteur déclaré. En retour, la ponction fiscale accrue pousse les entreprises à rejoindre l'économie informelle et contraint les pouvoirs publics à alourdir les prélèvements sur des contribuables de moins en moins nombreux. Par conséquent, l'existence d'un secteur informel étendu cause aux entreprises qui paient leurs impôts un préjudice croissant.

- L'augmentation des taux d'imposition peut supprimer l'avantage de productivité détenu par les grandes entreprises déclarées. Lorsque le coût total de la conformité aux réglementations fiscales et autres est élevé, les entreprises informelles détiennent un avantage compétitif sensible sur les entreprises formelles, ce qui peut empêcher l'entrée ou l'expansion de ces dernières sur le marché.

- Le poids des prélèvements obligatoires dissuade également les entreprises déclarées d'innover et d'investir parce qu'ils rognent leurs bénéfices après impôts. Le ralentissement de l'innovation et de l'investissement peut freiner la productivité et la croissance économique.

- Rares sont les actions engagées à l'encontre d'entreprises informelles afin de faire respecter le droit de la concurrence. Bien que les autorités de la concurrence aient, dans certains cas, pris des

mesures efficaces pour lutter contre le travail non déclaré, des initiatives impliquant l'ensemble des pouvoirs public sont de mise pour le faire véritablement reculer. Les actions de sensibilisation menées par les autorités font connaître les effets bénéfiques à long terme induits par un recul du secteur informel. En identifiant les réglementations qui brident inutilement la concurrence et en militant pour leur réforme, les autorités de la concurrence peuvent encourager davantage d'entreprises à rejoindre l'économie formelle ou à ne pas la quitter.

- Les pouvoirs publics peuvent lutter contre l'économie informelle et accroître la productivité en prenant les mesures suivantes :

  - réduire les coûts du respect de la réglementation,
  - supprimer les restrictions superflues à la concurrence sur les marchés de produits,
  - revoir le droit du travail afin de cibler les coûts de licenciement prohibitifs et les exigences contractuelles trop rigides,
  - simplifier les régimes fiscaux trop complexes et abaisser les droits et impôts excessifs,
  - rationaliser le processus d'enregistrement des entreprises,
  - renforcer la discipline fiscale et réglementaire,
  - améliorer l'accès au crédit et aux marchés publics.

2. Que signifie le terme informel ?

Dans leurs travaux sur « l'économie informelle », les chercheurs utilisent différents termes pour décrire l'objet de leur étude[1]. La littérature économique emploie souvent, mais de manière souvent incohérente, des termes tels que « souterraine », « parallèle », « informelle », « non officielle », « non observée », « clandestine », « dissimulée » ou « entreprises appartenant à des ménages ». Gerxhani explique qu'aucune définition unique de l'économie informelle ne s'avère appropriée pour rendre compte de la diversité des intérêts des chercheurs dans ce domaine ; par conséquent, « les chercheurs ont renoncé à élaborer une définition unique. Ils s'efforcent plutôt de définir le secteur informel en fonction du problème considéré »[2]. Pour simplifier, la signification de l'économie informelle varie d'une personne à l'autre[3].

Le nombre d'activités que recouvre une définition donnée de l'économie informelle reflète la diversité des aspects considérés. Certaines recherches se concentrent sur des éléments relatifs au travail[4] ; d'autres

1 Keith Hart (1973) a été le premier à utiliser le terme « secteur informel » pour décrire une partie de la main-d'œuvre urbaine qui travaillait en dehors du secteur formel. Le sens d'origine donné par Hart a survécu, mais des interprétations radicalement différentes sont aussi en vigueur. Par exemple, peu après la publication des travaux de Hart, un rapport du Bureau international du travail caractérisait l'économie informelle comme l'ensemble des activités qui échappent à l'impôt et à la réglementation publique.

2 Plusieurs ouvrages récents consacrés à l'économie informelle se sont intéressés à la définition de ce concept et aux conséquences de cette définition sur les mesures effectuées. Voir Perry *et al.* (2007), Gerxhani (2004) et Henley, Arabsheibani et Carneiro (2006) pour plus de détails.

3 Kenyon et Kapaz (2005).

4 De nombreux ouvrages s'intéressent aux questions spécifiques au bien-être des travailleurs ou aux conditions de travail, comme les droits à pension et à la sécurité sociale, la santé, la sécurité et d'autres aspects relatifs au travail.

portent sur l'excès de réglementation, la concurrence déloyale et la faible productivité. Il est généralement admis que l'économie informelle ne désigne pas seulement des marchands ambulants non enregistrés ou des petites entreprises non déclarées comptant cinq salariés au maximum, mais englobe aussi de grandes entreprises aux effectifs importants qui échappent à l'impôt, enfreignent différents règlements relatifs aux produits, au travail ou à l'occupation des sols ou se livrent à des activités illicites.

Il existe des définitions plus spécifiques et étroites de l'économie informelle, notamment dans les ouvrages sur les comptes nationaux. Par exemple, un manuel de l'OCDE divise l'économie « non observée » en cinq catégories[5] :

- production souterraine : activités délibérément soustraites au regard des pouvoirs publics pour éviter le paiement des impôts et des cotisations de sécurité sociale ou se soustraire à certaines normes légales et à certaines procédures administratives[6],

- production illégale : la production de biens ou de services dont la fabrication, la vente ou la possession sont interdites par la loi ou les activités de production qui sont habituellement légales, mais qui deviennent illégales si elles sont exercées par des producteurs qui n'en ont pas l'autorisation. Par exemple, cette catégorie inclut la prestation de services par des agents économiques non autorisés,

- production du secteur informel en vue principalement de créer des emplois et des revenus pour les personnes concernées. Ces unités ayant un faible niveau d'organisation opèrent à petite échelle avec peu ou pas de division du travail[7]. Dans les ouvrages consacrés aux comptes nationaux, le secteur informel se compose souvent d'entreprises comptant au plus cinq salariés,

- production des ménages pour leur propre usage final : elle comprend la production agricole et l'élevage, la construction par les ménages de leur propre habitation et d'autres activités économiques pour compte propre, et

- production manquante en raison des carences du dispositif de collecte des données : elle comprend toutes les activités de production qui devraient être prises en compte par le dispositif de collecte des données de base, mais qui sont manquantes en raison de lacunes statistiques.

Bien que les entreprises informelles soient spécifiquement définies dans les études sur les comptes nationaux, de nombreux chercheurs estiment que cette définition étroite passe à côté de l'essentiel. Le principal problème posé par le travail non déclaré est qu'il nuit à la productivité et au bien-être social, surtout lorsque les entreprises informelles sont nombreuses dans un ou plusieurs secteurs de l'économie. Ils allèguent que l'économie informelle est le symptôme de problèmes plus profonds liés à des lacunes dans le processus de décision et de mise en œuvre. S'attaquer aux causes sous-jacentes de l'économie informelle peut faire partie intégrante d'un programme de développement plus large[8].

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5 Les définitions précises de chacune de ces cinq catégories sont trop complexes pour être reproduites dans ce document et se chevauchent dans certains cas. Le lecteur intéressé peut se reporter au « Manuel sur la mesure de l'économie non observée » de l'OCDE (2002).

6 Les normes légales incluent par exemple les lois sur le salaire minimum et la durée maximale du temps de travail, ainsi que les normes en matière de sécurité ou de santé. Les procédures administratives incluent l'obligation de remplir des questionnaires statistiques ou d'autres formulaires administratifs.

7 Les ouvrages sur les comptes nationaux soulignent que la plupart des activités du secteur informel procurent des biens et services dont la production et la distribution sont parfaitement légales.

8 Voir Perry *et al*. (2008).

3. Taille et nature de l'économie informelle

Bien que de nombreuses études empiriques pâtissent de problèmes de données, ils sont particulièrement fréquents dans les recherches consacrées à l'économie informelle. Par définition, la plupart des activités économiques qualifiées d'informelles ne sont pas prises en compte dans les données des comptes nationaux. En l'absence d'autres sources d'informations, les données nécessaires pour évaluer la taille de l'économie informelle sont donc tout bonnement inexistantes. Elles doivent donc être recueillies directement auprès des entreprises et des ménages ; sinon, l'évaluation doit se faire indirectement par le biais d'autres sources de données telles que la consommation d'électricité ou la demande monétaire[9]. Pour mieux illustrer l'incidence de la définition de l'économie informelle et des techniques d'estimation, la section suivante passe brièvement ces questions en revue.

3.1. La mesure de la taille de l'économie informelle en Amérique latine

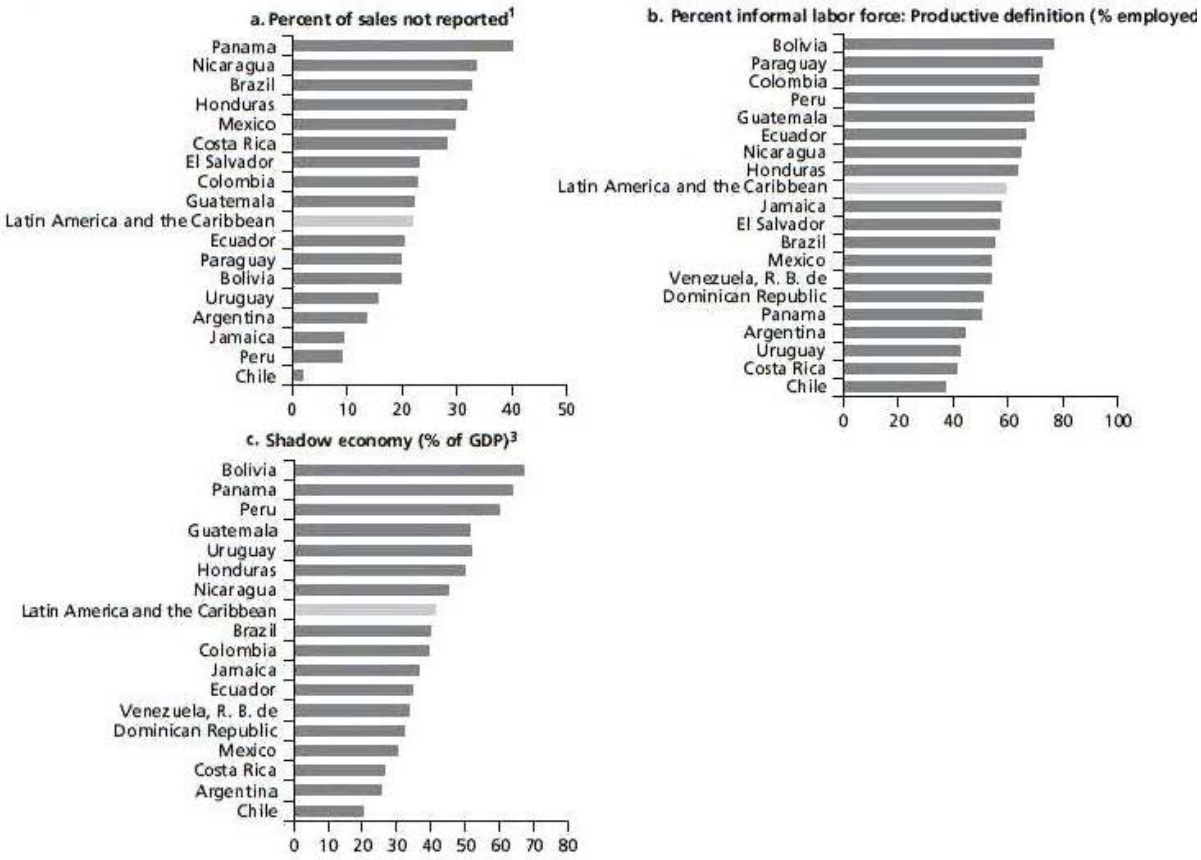
Des résultats récents facilitent la comparaison des estimations de la taille de l'économie informelle en fonction de différentes définitions ou techniques[10]. Ce travail, qui cible l'Amérique latine, rend compte de six estimations différentes de la taille de l'économie informelle dans plusieurs pays de cette région du monde. Le graphique 1 présente les résultats de trois mesures effectuées.

L'une des méthodes d'évaluation de l'économie informelle consiste à se procurer des informations correspondantes de la manière la plus « directe » possible. Bien que les techniques d'estimation directe ne mesurent pas directement l'importance du secteur informel en tant que tel, elles se fondent sur des données provenant d'enquêtes volontaires ou de contrôles fiscaux afin d'élaborer des estimations. En général, ces enquêtes demandent aux entreprises d'indiquer spontanément leurs chiffres d'affaires, leur appréciation de la discipline fiscale dans leur secteur et d'autres aspects de leurs activités. Les enquêtes sur le climat d'investissement menées par la Banque mondiale mesurent la discipline fiscale en interrogeant les entreprises sur le montant des recettes et sur le nombre de travailleurs non déclarés. Le cadre a du graphique 1 présente une estimation du pourcentage des ventes non déclarées par les entreprises. Le pourcentage de sous-déclaration va de moins de 5 % pour le Chili à plus de 40 % pour le Panama. Ces estimations montrent que 5 % des ventes réalisées par les entreprises au Chili sont le fait d'entreprises informelles, contre plus de 40 % au Panama.

9 Voir Thomas (1993, 1999) et Breusch (2005) pour plus de détails et des critiques supplémentaires de ces approches.

10 Voir Perry *et al.* (2007).

Graphique 1 : Mesures de l'économie informelle[11]



Note:
1. Informality is measured by the percentage of sales that businesses do not report for tax purposes (Investment Climate Surveys 2006).
2. "An individual is considered an informal worker if (s)he belongs to any of the following categories: (i) unskilled self-employed, (ii) salaried worker in a small private firm, (iii) zero-income worker" (Gasparini and Tornarolli 2006, 8).
3. "The shadow economy includes all market-based legal production of goods and services that are deliberately concealed from public authorities for the following reasons: (1) to avoid payment of income, value added or other taxes, (2) to avoid payment of social security contributions, (3) to avoid having to meet certain legal labor market standards, such as minimum wages, maximum working hours, safety standards, etc., and (4) to avoid complying with certain administrative procedures, such as completing statistical questionnaires or other administrative forms" (Schneider 2005, 600).
In all cases, regional figures are unweighted averages.

Notes :
a. Pourcentage de ventes non déclarées[1]
b. Pourcentage de main-d'œuvre informelle : définition productive (% de salariés)[2]
c. Économie parallèle (% du PIB)[3]

1. Le secteur informel désigne le pourcentage des ventes que les entreprises ne déclarent pas à des fins fiscales (enquête 2006 sur le climat d'investissement).
2. « Une personne est considérée comme étant un travailleur informel si elle appartient à l'une des catégories suivantes : (i) travailleur indépendant non qualifié, (ii) travailleur salarié d'une petite entreprise privée, (iii) travailleur non rémunéré » (Gasparini et Tornarolli 2006, 8).
3. « L'économie parallèle inclut la production légale de biens ou de services marchands qui est délibérément soustraite au regard des pouvoirs publics pour les raisons suivantes : (1) éviter le paiement de l'impôt sur le revenu, de la taxe sur la valeur ajoutée et d'autres taxes ; (2) éviter le paiement des cotisations de sécurité sociale ; (3) se soustraire à certaines normes légales sur le marché du travail, comme le salaire minimum, le plafonnement du temps de travail, les normes en matière de sécurité, etc. ; et (4) se soustraire à certaines procédures administratives, comme l'obligation de remplir des questionnaires statistiques ou d'autres formulaires administratifs » (Schneider 2005, 600).
Dans tous les cas, les chiffres régionaux sont des moyennes non pondérées.

11 De Perry *et al*. (2007).

Les enquêtes auprès des ménages et de la population active constituent un autre moyen direct de mesurer l'économie informelle. Le cadre b du graphique 1 rend compte d'une mesure souvent appelée définition « productive », c'est-à-dire qui cible davantage les petites entreprises informelles. La définition productive inclut les travailleurs indépendants, les travailleurs pour compte propre assistés ou non de membres de leur famille, les micro-entrepreneurs et leurs salariés[12]. Selon cette définition, la proportion de la main-d'œuvre exerçant dans le secteur informel est comprise entre un peu moins de 40 % au Chili et plus de 70 % en Bolivie.

Les estimations de l'importance du secteur informel peuvent aussi être indirectes[13]. Le cadre c du graphique 1 évalue la taille de l'économie parallèle en s'appuyant sur une méthode statistique souvent appelée modèle MIMIC (*Multiple Indicator Multiple Cause*, multiples indicateurs multiples causes)[14]. L'économie parallèle englobe toutes les activités délibérément soustraites au regard des pouvoirs publics pour éviter le paiement des impôts et des cotisations de sécurité sociale ou contourner certaines normes légales ou procédures administratives[15]. Selon cette mesure, le secteur informel va de 20 % pour le Chili à environ 70 % en Bolivie.

Ces résultats montrent que la définition de l'économie informelle joue un rôle essentiel. La taille de l'économie informelle mesurée sur la base des travailleurs est supérieure à celle qui reflète le pourcentage des ventes non déclarées[16]. En outre, la position dans le classement varie elle aussi. La Bolivie, qui se situait au bas de l'échelle avec la méthode fondée sur les ventes non déclarées, se retrouve en tête du classement avec les mesures basées sur l'économie parallèle et la définition productive. Si l'on se réfère à ces résultats, le problème de la main-d'œuvre informelle s'avère plus préoccupant en Bolivie que dans d'autres pays d'Amérique latine. Les responsables politiques doivent savoir que les résultats obtenus varient en fonction des définitions appliquées.

3.2. L'essor de l'économie informelle dans le monde

Les chercheurs souhaitent à la fois connaître l'importance de l'économie informelle et savoir si elle progresse ou régresse. Le tableau 1 résume les résultats relatifs à la taille de l'économie parallèle à trois moments dans le temps : 1990/1991, 1994/1995 et 1999/2000. Selon les estimations, en 1999/2000, l'économie parallèle représentait en moyenne 41.2 % du PIB de 24 pays africains[17], 41.5 % du PIB de

12 Il existe également la définition dite légaliste. Elle cible davantage la couverture des travailleurs par les dispositifs obligatoires de protection des salariés. Voir Hussmanns (2004) pour plus de détails.

13 Il existe plusieurs méthodes. Les comptes nationaux de revenu et de produits peuvent être utilisés pour estimer la taille de l'économie informelle, sur la base de l'écart entre le total des recettes et le total des dépenses. Les données relatives à la consommation d'électricité et à la demande monétaire sont également utilisées. Toutefois, la méthode la plus répandue est celle du modèle MIMIC (multiples indicateurs multiples causes).

14 Voir Perry *et al.*, Schneider et Enste (2000, 2002).

15 La définition de l'économie parallèle appliquée par les auteurs semble donc correspondre parfaitement à celle de l'économie souterraine examinée ci-dessus.

16 Les auteurs observent que la corrélation entre ces deux mesures de l'économie informelle est très faible, puisqu'elle n'est que de 0.11. Ces résultats suggèrent que d'autres facteurs décrits ci-dessous ont une incidence sur l'importance de l'économie informelle. Ils révèlent également une faible corrélation entre les mesures de l'économie parallèle et les ventes sous-déclarées (0.29), mais une corrélation relativement élevée (0.60) avec les estimations obtenues en appliquant la définition productive.

17 Les 24 pays africains sont les suivants : Afrique du Sud, Algérie, Bénin, Botswana, Burkina Faso, Cameroun, Côte d'Ivoire, Égypte, Éthiopie, Ghana, Kenya, Madagascar, Malawi, Mali, Maroc, Mozambique, Niger, Nigéria, Ouganda, Sénégal, Tanzanie, Tunisie, Zambie et Zimbabwe.

17 pays d'Amérique centrale et du Sud[18], 26.3 % du PIB de 25 pays d'Asie[19], 37.9 % du PIB de 23 pays en transition[20] et 16.8 % du PIB de 21 pays de l'OCDE[21]. Elles indiquent également que, sur la période de 11 ans étudiée et pour les pays pour lesquels des estimations sont disponibles, le secteur informel s'est accru de 7.3 % en Afrique, 7.3 % dans les pays d'Amérique centrale et du Sud, 5.4 % dans les pays d'Asie, 6.4 % dans les pays en transition et 3.6 % dans les pays de l'OCDE. L'annexe A contient des statistiques détaillées supplémentaires sur 110 pays pour l'année 2000[22]. Les deux sections suivantes examinent les causes du développement de l'économie informelle et ses conséquences.

Tableau 1 : Taille moyenne de l'économie parallèle dans des pays en développement, en transition et de l'OCDE[23]

Pays/Année	Taille moyenne de l'économie parallèle – valeur ajoutée en % du PIB officiel selon la méthode MIMIC et de la demande monétaire (nombre de pays)		
Pays en développement :	**9090/91**	**1994/95**	**1999/2000**
Afrique	33.9 (24)	37.4 (24)	41.2 (24)
Amérique centrale et du Sud	34.2 (17)	37.7 (17)	41.5 (17)
Asie	20.9 (25)	23.4 (25)	26.3 (25)
Pays en transition	31.5 (23)	34.6 (23)	37.9 (23)
Pays de l'OCDE très développés	13.2 (21)	15.7 (21)	16.8 (21)

4. Causes de l'existence de l'économie informelle

De nombreux facteurs peuvent influer sur l'attractivité du secteur informel. Cette partie du document fournit des informations générales pour illustrer les facteurs que les responsables politiques devraient prendre en compte lorsqu'ils s'efforcent de lutter contre l'économie informelle. Elle n'entend pas dresser une liste exhaustive de toutes les causes possibles et ne privilégie pas les facteurs sociaux, démographiques

18 Les 17 pays d'Amérique centrale et du Sud sont les suivants : Argentine, Bolivie, Brésil, Chili, Colombie, Costa Rica, Équateur, Guatemala, Honduras, Jamaïque, Mexique, Nicaragua, Panama, Pérou, République dominicaine, Uruguay, Venezuela.

19 Les 25 pays d'Asie sont les suivants : Arabie Saoudite, Bangladesh, Chine, Corée, Émirats arabes unis, Hong Kong, Chine, Inde, Indonésie, Iran, Israël, Japon, Jordanie, Liban, Malaisie, Mongolie, Népal, Pakistan, Philippines, Singapour, Sri Lanka, Syrie, Thaïlande, Turquie, Viet Nam, Yémen.

20 Les 23 pays en transition sont les suivants : Albanie, ancienne République fédérale de Yougoslavie, Arménie, Azerbaïdjan, Bélarus, Bosnie-Herzégovine, Bulgarie, Croatie, Fédération de Russie, Géorgie, Hongrie, Kazakhstan, Lettonie, Lituanie, Moldova, Ouzbékistan, Pologne, République kirghize, République slovaque, République tchèque, Roumanie, Slovénie, Ukraine.

21 Les 21 pays de l'OCDE sont les suivants : Allemagne, Australie, Autriche, Belgique, Canada, Danemark, Espagne, États-Unis, Finlande, France, Grande-Bretagne, Grèce, Irlande, Italie, Japon, Norvège, Nouvelle-Zélande, Pays-Bas, Portugal, Suède, Suisse.

22 Bien que la méthodologie sous-jacente utilisée par Schneider (2005) ait été critiquée par certains auteurs, trois raisons importantes justifient de fournir ces statistiques détaillées supplémentaires. Premièrement, il ne faut pas oublier qu'aucune définition ne rend parfaitement compte de l'économie informelle et qu'aucune technique d'estimation n'est idéale – toutes les définitions et techniques ont leurs faiblesses. Deuxièmement, il est important de connaître l'étendue du travail informel dans les pays afin de pouvoir identifier les pratiques exemplaires susceptibles de le faire reculer. Troisièmement, ses estimations informent sur la taille de l'économie informelle dans de nombreux pays.

23 Voir Schneider (2005).

ou macroéconomiques[24], en dépit de leur importance ; en revanche, elle examine la relation entre la taille de l'économie informelle et les réglementations, impôts et structures de gouvernance.

4.1. Incidence des réglementations sur l'économie informelle

De nombreux chercheurs ont souligné que les réglementations sont souvent contraignantes, inutiles ou vont au-delà de ce qui est nécessaire pour atteindre leurs objectifs. Une réglementation trop contraignante ou inefficiente peut augmenter considérablement le coût du passage à l'économie formelle et l'exercice d'une activité déclarée[25]. En outre, la suppression des restrictions inutiles supportées par les entreprises peut intensifier la concurrence dans l'économie formelle, car les entreprises seront plus nombreuses à vouloir y entrer. Sur les marchés concentrés notamment, la suppression des réglementations inutilement coûteuses peut contribuer à renforcer la concurrence et à améliorer les performances économiques globales d'un pays.

4.1.1. Règles relatives à l'enregistrement des entreprises

La difficulté de s'enregistrer et de débuter ses activités est systématiquement reconnue comme un obstacle majeur que rencontrent les entreprises informelles. Dans de nombreux pays, des procédures d'immatriculation coûteuses et inefficientes dissuadent fortement les entreprises de rejoindre l'économie formelle[26]. Au lieu d'entraver leurs efforts, les pouvoirs publics devraient favoriser activement l'immatriculation des entreprises.

Pour mesurer la facilité de faire des affaires dans un pays, la Banque mondiale publie chaque année les indicateurs DBI (*Doing Business Indicators*). Ces indicateurs rendent compte de la facilité de faire des affaires dans dix domaines, dont l'un concerne la création d'entreprise[27]. Les critères d'évaluation des pays sont les suivants :

a) nombre de procédures qu'une entreprise doit mener à bien avant de pouvoir débuter légalement ses activités[28],

b) temps (nombre de jours) requis pour accomplir chacune de ces procédures,

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24 La contribution de l'Ukraine indique que la taille de l'économie informelle s'est accrue temporairement en réaction aux processus de transformation du marché à l'œuvre dans les années 90. La migration rapide vers les villes peut entraîner l'afflux d'un excédent de main-d'œuvre non qualifiée dans le secteur informel. L'instabilité macroéconomique provoquée par une crise sur le marché des changes ou un revirement économique peut influer sur les flux d'emplois entre l'économie formelle et l'économie informelle.

25 Voir les contributions de la Bulgarie, de l'Égypte, de la Jordanie, du Kenya, de la Mongolie, de la Turquie et de l'Ukraine au Forum mondial sur la concurrence de l'OCDE, La politique de la concurrence et l'économie informelle.

26 La contribution de l'Ukraine cite spécifiquement les procédures d'enregistrement des entreprises comme principal obstacle à l'entrée dans l'économie formelle (Forum mondial sur la concurrence de l'OCDE, La politique de la concurrence et l'économie informelle).

27 Les dix domaines identifiés par la Banque mondiale sont les suivants : création d'entreprise ; octroi de permis de construire ; embauche des travailleurs ; transfert de propriété ; obtention de prêts ; protection des investisseurs ; paiement des taxes et impôts ; commerce transfrontalier ; exécution des contrats ; et fermeture d'entreprise. Voir le rapport *Doing Business* 2008, Comparaison des réglementations dans 178 pays (www.doingbusiness.com).

28 Ces procédures incluent l'obtention de l'ensemble des autorisations et licences nécessaires et l'accomplissement de toutes les inscriptions, vérifications et notifications requises auprès des autorités afin de permettre à l'entreprise d'exercer des activités déclarées.

c) coût induit par chacune de ces procédures et par le démarrage de l'activité (en pourcentage du revenu par habitant), et

d) capital minimum que les entreprises doivent verser (en pourcentage du revenu par habitant).

Tableau 2 : Facilité de création d'une entreprise[29]

Région ou économie	Durée (jours)	Procédures (nombre)	Coût (% du RNB par habitant)	Capital minimum obligatoire à verser (% du RNB par habitant)
Amérique latine et Caraïbes	64.5	9.7	39.1	3.4
Asie de l'Est et Pacifique	44.2	8.6	32.3	37.3
Asie du Sud	32.5	7.4	31.9	0.6
Moyen-Orient et Afrique du Nord	23.5	8.4	41.0	331.4
Europe de l'Est et Asie centrale	22.6	7.7	8.6	36.0
OCDE	13.4	5.8	4.9	19.7

L'annexe B fournit des statistiques détaillées sur la facilité de créer une entreprise dans 180 pays à partir de la base de données des DBI pour 2008 et le tableau 2 ci-dessus présente des analyses régionales. Bien que les pays de l'OCDE soient bien placés pour ce critère, il existe des différences considérables entre eux. Par exemple, le délai de création d'une entreprise va de un à deux jours, respectivement en Nouvelle-Zélande et en Australie, à 47 jours en Espagne. En dehors de l'OCDE, la Géorgie, Maurice, Puerto Rico et Singapour font partie des dix premiers pays pour ce qui est de la facilité globale de création d'une entreprise.

Les écarts importants pour les délais d'immatriculation et les coûts de création d'une entreprise laissent penser que les pays disposent d'une marge significative pour améliorer leurs pratiques dans ces domaines et accroître la participation au secteur formel. D'une manière générale, les données montrent que les pays en développement réglementent beaucoup plus les créations d'entreprises que les pays développés. Des procédures d'enregistrement très longues et coûteuses dissuaderont probablement les entreprises les moins déterminées de s'immatriculer et de rejoindre l'économie formelle. Au Brésil, l'enregistrement d'une entreprise prend 155 jours, contre 76 en Indonésie. Des obligations de capital minimum trop sévères peuvent elles aussi décourager les entreprises de s'enregistrer. L'annexe B montre que la Syrie, la Guinée-Bissau, le Niger, l'Éthiopie, le Togo, Djibouti, la République centrafricaine, la Guinée, Oman et le Burkina Faso exigent le capital minimum obligatoire le plus élevé pour créer une entreprise. En revanche, 79 des 181 pays étudiés dans la base de données 2008 des DBI n'exigent pas de capital minimum.

4.1.2. Droit du travail

Le droit du travail régit notamment l'embauche et le licenciement de salariés, les indemnités de départ, le salaire minimum, les heures supplémentaires et leur rémunération, ainsi que les avantages sociaux et prestations sociales obligatoires, les droits d'association et de négociations collectives. Les réglementations afférentes sont souvent votées par le Parlement et visent à protéger les travailleurs contre les mesures inéquitables et discriminatoires. Alors que les pouvoirs publics tentent de trouver le juste équilibre entre protection des travailleurs et flexibilité du marché du travail, la plupart des pays en développement privilégient une rigidité excessive au détriment des entreprises comme des travailleurs. Par conséquent, les entreprises sont plus susceptibles de procéder à des embauches informelles lorsque la

[29] Calculs provenant de la base de données DBI pour 2008.

réglementation est moins souple. Les recherches corroborent cette hypothèse et mettent en évidence un lien entre droit du travail rigide et taille de l'économie informelle[30].

Le tableau 3 présente quelques résultats du rapport *Doing Business* 2008 de la Banque mondiale concernant plusieurs pays. Selon les mesures des DBI, des pays d'Afrique comme la Guinée équatoriale, Sao Tomé-et-Principe, la Tanzanie, la République du Congo, la République centrafricaine, la Guinée-Bissau, le Niger et la République démocratique du Congo ont la réglementation du travail la plus rigide. Le tableau 3 indique également que trois pays de l'OCDE seulement (États-Unis, Australie et Danemark) figurent parmi les dix premiers en termes de facilité d'embauche. Des indemnités de licenciement élevées incitent les entreprises à recourir à de la main-d'œuvre informelle car les décisions d'embauche ne sont pas toujours judicieuses et les périodes de ralentissement économique peuvent entraîner des licenciements coûteux. L'Égypte, le Ghana, la Guinée équatoriale, le Mozambique, la Sierra Leone, le Soudan, la Zambie et le Zimbabwe font partie des pays où les coûts de licenciement sont élevés.

Tableau 3 : Résultats des recherches de la Banque mondiale sur la réglementation de l'embauche

Indice de rigidité de l'emploi		Coût de licenciement (semaines de salaire)[31]	
Le moins	**Le plus**	**Le moins**	**Le plus**
Singapour	Panama	Afghanistan – 0	Soudan – 118
États-Unis	Sierra Leone	Danemark – 0	Égypte – 132
Îles Marshall	Angola	Iraq – 0	Guinée équatoriale – 133
Maldives	Rép. dém. du Congo	Îles Marshall – 0	Mozambique – 134
Géorgie	Guinée-Bissau	Micronésie – 0	Équateur – 135
Tonga	Paraguay	Nouvelle-Zélande – 0	Sri Lanka – 169
Brunei	Guinée équatoriale	Palaos – 0	Zambie – 178
Australie	Sao Tomé-et-Principe	Puerto Rico – 0	Ghana – 178
Palau	Venezuela	Tonga – 0	Sierra Leone – 189
Danemark	Bolivie	États-Unis – 0	Zimbabwe – 446

4.2. Incidence des impôts sur l'économie informelle

De nombreux auteurs considèrent que les entreprises qui choisissent d'opérer dans le secteur informel le font pour des raisons fiscales. Elles échappent à l'impôt lorsqu'elles sous-déclarent leur chiffre d'affaires ou leurs bénéfices ou ne paient pas la TVA, la taxe sur les ventes, la taxe foncière ou d'autres impôts. Le tableau 4 présente des résultats issus de la base de données des DBI de la Banque mondiale pour 2008. Sept pays examinés par la Banque mondiale ont une législation aux termes de laquelle la charge fiscale supportée par les entreprises dépasse l'intégralité de leurs bénéfices (Argentine, Bélarusse, Burundi, Gambie, République centrafricaine, République démocratique du Congo, Sierra Leone). La discipline fiscale peut être difficile lorsqu'il faut procéder à de nombreux paiements ou remplir de multiples formulaires ou lorsque, tout simplement, se conformer à la législation prend beaucoup de temps. Des études révèlent que les pays où l'économie informelle est développée soumettent les entreprises à une lourde charge fiscale s'agissant du nombre d'impôts, du nombre de paiements différents et du total de ces paiements[32]. Par exemple, parmi les 181 pays étudiés dans la base de données des DBI, le Venezuela se

30 Voir Banque mondiale, *Doing Business* 2007, How to reform.

31 Indemnités et pénalités dues en cas de licenciement d'un travailleur pour raisons économiques, exprimées en nombre de semaines de salaires.

32 Voir le rapport *Doing Business* 2008, Comparaison des réglementations dans 178 pays, p. 39.

classe 174e pour le nombre de paiements, 173e pour la durée des procédures de paiement et 144e pour le taux global d'imposition des bénéfices.

Tableau 4 : Résultats des recherches de la Banque mondiale sur le poids de la fiscalité

Nombre de paiements par an[33]			Taux global d'imposition (% des bénéfices)[34]	
Le plus bas	**Le plus élevé**		**Le plus bas**	**Le plus élevé**
Maldives – 1	Côte d'Ivoire – 66		Vanuatu – 8.4	Tadjikistan – 85.5
Qatar – 1	Serbie - 66		Maldives – 9.1	Ouzbékistan – 90.6
Suède – 2	Venezuela – 70		Qatar – 11.3	Mauritanie – 98.7
Hong Kong, Chine – 4	Jamaïque – 72		Émirats arabes unis – 14.4	Argentine – 108.1
Norvège – 4	République kirghize – 75		Koweït – 14.4	Bélarusse – 117.5
Singapour – 5	Monténégro – 89		Arabie Saoudite – 14.5	République centrafricaine – 203.8
Kiribati – 7	Ukraine – 99		Bahreïn – 15	Rép. dém. du Congo – 229.8
Lettonie – 7	Ouzbékistan – 106		Zambie – 16.1	Sierra Leone – 233.5
Maurice – 7	Bélarusse – 112		Cisjordanie et Gaza – 16.8	Burundi – 278.7
Afghanistan – 8	Roumanie – 113		Botswana – 17.1	Gambie – 292.4

4.3. Incidence des mesures coercitives des pouvoirs publics

La réglementation des activités commerciales, le droit du travail et la fiscalité influent sur les calculs de coûts et d'avantages effectués par les entreprises et, en définitive, les incitent à rejoindre l'économie formelle ou les en dissuadent. Toutefois, d'autres facteurs entrent en ligne de compte, notamment la perception, par les entreprises, de l'efficacité des pouvoirs publics. Une action efficace de l'administration encourage les entreprises à respecter la législation fiscale et les autres réglementations. Lorsque les ressources consacrées aux contrôles et au recouvrement des impôts sont insuffisantes, par exemple, les entreprises seront davantage incitées à contourner la législation. Des sanctions faibles et non systématiques encouragent aussi ce comportement[35].

Selon certaines études, il existe un lien entre efficacité de l'action publique et taille de l'économie informelle. Ainsi, la perception de l'inefficacité des pouvoirs publics est associée à un secteur informel plus développé, tandis que la corruption lui est positivement corrélée. Par exemple, un niveau plus élevé de sous-déclaration des ventes et des effectifs est corrélé à une perception de corruption[36]. Ces éléments laissent penser que les entreprises sous-déclarent leurs ventes ou leurs effectifs salariés afin de dissimuler leurs activités aux fonctionnaires corrompus ou simplement parce qu'elles ne veulent pas payer des impôts

33 Nombre total de paiements par an.

34 Montant total des taxes, impôts et contributions obligatoires dus par l'entreprise.

35 Des éléments montrent également que les sanctions et la probabilité d'un contrôle n'expliquent pas à elles seules les niveaux observés de discipline fiscale. Les normes sociales semblent aussi jouer un rôle (Torgler, 2005). Cela laisse penser que les pouvoirs publics doivent aussi se soucier de morale fiscale.

36 Perry *et al*. (2007).

et financer une administration inefficace. Dans un cas comme dans l'autre, l'économie informelle se développe.

5. L'emploi informel réduit la productivité

Dans des circonstances normales, la concurrence permet aux entreprises plus productives de gagner des parts de marché au détriment d'entreprises moins productives. Lorsque la concurrence s'exerce normalement, le marché adresse des messages clairs aux entreprises (par exemple par le biais des prix qu'elles peuvent facturer et des bénéfices qu'elles peuvent réaliser) sur les biens et services que les consommateurs souhaitent acquérir. Les entreprises efficientes qui proposent des produits attractifs à bas prix prospèreront, tandis que celles inefficientes péricliteront[37]. En outre, les recherches effectuées montrent systématiquement que les avantages procurés par une productivité accrue sont souvent répercutés sur les consommateurs grâce à des prix plus bas, des biens et services de meilleure qualité ou des produits innovants[38]. Par conséquent, les gains de productivité contribuent au bien-être des consommateurs et sont normalement une source essentielle d'avantage concurrentiel pour les entreprises et les pays.

Toutefois, l'économie informelle peut fausser le processus concurrentiel par lequel les entreprises productives et déclarées conquièrent des parts de marché et vendent à bas prix des biens et des services autorisés aux consommateurs. Les entreprises informelles peuvent survivre et même prospérer sur le marché, en dépit de leur plus faible productivité, précisément parce qu'elles échappent aux réglementations coûteuses et réduisent ainsi fortement leur structure de coûts. Le coût de fourniture de biens et de services sur le marché étant beaucoup plus faible pour les entreprises informelles, elles ne sont pas soumises aux mêmes pressions concurrentielles que les entreprises déclarées et ne quitteront vraisemblablement pas le marché, même si les entreprises déclarées sont souvent beaucoup plus productives. Par conséquent, de nombreux observateurs constatent avec inquiétude que le secteur informel nuit à la productivité des marchés et de l'ensemble de l'économie[39].

Pour aider le lecteur à comprend l'effet pernicieux du secteur informel sur la productivité, cette section passe en revue les facteurs qui pèsent sur la productivité des entreprises informelles et explique comment celles-ci brident la croissance des entreprises formelles. Elle examine également les résultats de travaux récents sur la productivité des entreprises informelles, qui mettent souvent en évidence l'effet délétère de l'informalité sur la productivité et son impact négatif sur la croissance économique des pays en développement.

5.1. Facteurs réduisant la productivité des entreprises informelles

Plusieurs facteurs diminuent la productivité des entreprises informelles en les maintenant artificiellement petites et en les privant de l'accès à un large éventail de ressources.

- *Incapacité de réaliser des économies d'échelle et de gamme.* Pour diverses raisons, les entreprises informelles sont souvent trop petites pour exploiter pleinement les économies d'échelle et de gamme. Par conséquent, leur coût moyen de production est souvent élevé, et elles ne parviennent pas à exploiter les gains d'efficience générés par la division du travail, entraînant un gaspillage de ressources. L'accès restreint au capital et au crédit explique en partie pourquoi les entreprises informelles restent petites. Lorsqu'une entreprise décide d'exercer ses activités

[37] Voir *Productivity and Competition, An OFT perspective on the Productivity Debate*, 2007.

[38] Nordhaus (2004) estime que 98 % seulement de la valeur sociale des innovations réalisées par l'économie américaine après la Seconde guerre mondiale a bénéficié aux consommateurs.

[39] Voir Lewis (2004), Djankov *et al*. (2002) et www.doingbusiness.org, par exemple.

dans le secteur informel, elle se prive de possibilités d'obtenir des capitaux et des crédits et d'investir dans des projets d'expansion. Les investisseurs et les banques sont moins enclins à investir et à accorder des prêts à des entreprises incapables de soumettre des dossiers complets, contenant documents d'immatriculation, autorisations d'exercice et quitus fiscal. Ils peuvent aussi exiger des états financiers certifiés portant sur de nombreuses années. Par conséquent, les petites entreprises non déclarées se tournent souvent vers des sources informelles (économies personnelles, membres de la famille, amis) ou même des prêteurs sur gages. Les sommes que ces créanciers peuvent prêter sont vraisemblablement réduites. L'informalité peut aussi nuire à la solvabilité des grandes entreprises. Lorsque de grandes entreprises sous-déclarent leurs ventes, leur attractivité aux yeux de bailleurs de fonds potentiels et leur capacité de se procurer des fonds auprès des investisseurs s'en trouvent réduites[40].

- Les entreprises informelles peuvent aussi *vouloir* rester petites pour ne pas être détectées par l'administration et sanctionnées parce qu'elles n'ont pas payé leurs impôts ou respecté différents règlements, dans la mesure où les contrôles se concentrent sur les grandes entreprises[41].

- *Emploi de travailleurs peu productifs*. Les travailleurs très productifs choisiront de préférence des entreprises déclarées qui offrent plus d'avantages. Selon une étude, la plupart des travailleurs qualifiés sont embauchés par des entreprises déclarées tenues, de par la loi, de leur offrir toute une série de prestations[42].

- *Plus faible intensité capitalistique*. L'intensité capitalistique des entreprises informelles est souvent inférieure à celle des entreprises déclarées parce qu'elles emploient des équipements moins nombreux et moins performants auxquels elles substituent une main-d'œuvre informelle bon marché. Cette stratégie réduit la productivité du travail et bride l'efficience économique.

- *Organisation inefficiente*. Le manque d'intensité concurrentielle sur les marchés où le secteur informel est très développé peut conduire les entreprises informelles à fonctionner de manière inefficiente. Elles peuvent utiliser des méthodes périmées et inefficientes pour produire leurs biens et leurs services. Par exemple, les entreprises de construction peuvent affecter les mêmes travailleurs à toutes les tâches au lieu de recourir à des sous-traitants. Elles peuvent aussi employer des processus qui font trop appel à l'habileté technique et pas assez aux matériaux préfabriqués[43].

- *Accès restreint aux ressources publiques*. Certains auteurs soulignent le fait que les entreprises informelles ont plus difficilement accès aux services publics (infrastructures, services bancaires, formation et autres prestations), ce qui pénalise leur productivité[44]. Pour participer à ces programmes, les entreprises doivent souvent être immatriculées.

- *Accès limité aux tribunaux.* Lorsqu'une entreprise opère dans le secteur informel, elle n'a souvent guère accès aux tribunaux et aux autres mécanismes officiels d'exécution des contrats. Privée de ces recours, elle s'inquiètera davantage de la capacité de ses clients de payer l'intégralité de leur

[40] Reis constate qu'une augmentation de 1 % de la part des salariés à temps plein non déclarés est associée à une baisse de 0.3 % de la productivité totale des facteurs.

[41] Farrell (2004).

[42] Voir McKinsey Global Institute (1998).

[43] Voir McKinsey Global Institute (1998).

[44] Djankov *et al.,* (2002).

dû. Par conséquent, elle limitera ses activités à un petit nombre de partenaires commerciaux, ce qui est inefficient.

- *Plus grande vulnérabilité à la corruption*. Les entreprises informelles sont plus exposées à la corruption que les entreprises formelles. Ces dernières peuvent signaler les cas de corruption aux autorités compétentes, tandis que les entreprises informelles craindront en agissant ainsi d'attirer l'attention des autorités et de subir des sanctions financières ou autres. Elles peuvent donc être plus enclines à payer des pots-de-vin que les entreprises déclarées, ce qui est un facteur d'inefficience[45].

- *Flexibilité du travail accrue.* L'emploi informel peut donner plus de liberté aux entreprises dans leur gestion de la main-d'œuvre et faire baisser les coûts d'embauche et de licenciement. Les entreprises informelles peuvent donc être en mesure de licencier plus facilement les travailleurs improductifs. Elles peuvent aussi augmenter leur efficience en payant leurs travailleurs moins que le salaire minimum (Almeida et Carneiro, 2005).

5.2. L'informalité est préjudiciable aux entreprises déclarées

Économies d'échelle et champ d'action. De nombreux auteurs suspectent que les entreprises informelles peuvent offrir des prix attractifs aux consommateurs uniquement parce qu'elles ne s'immatriculent pas, ne paient pas la taxe sur la valeur ajoutée et l'impôt sur le revenu, échappent au droit du travail, aux réglementations sur les produits et sur l'occupation des sols, violent les droits d'auteur, vendent des produits de contrebande ou fournissent des services sans autorisation[46]. Si le coût global du respect des différentes réglementations est élevé, les entreprises informelles qui se livrent à ces activités acquerront un avantage concurrentiel substantiel face aux entreprises formelles aux yeux des consommateurs. Cela peut donc empêcher l'entrée ou le développement d'entreprises formelles sur le marché. Lorsque de petites entreprises informelles empêchent l'entrée ou l'expansion d'entreprises formelles plus grandes et plus productives, celles-ci sont lésées et des ressources sont gaspillées[47].

45 Johnson *et al.* (2000) constatent que le travail informel est positivement corrélé à la corruption.

46 Selon Farrell, les stratégies adoptées par les entreprises informelles pour se soustraire aux réglementations varient d'un secteur à l'autre. Par exemple, les entreprises de construction ont tendance à sous-déclarer leurs effectifs et le nombre d'heures travaillées (pour réduire leurs paiements de sécurité sociale), tandis que les vendeurs au détail non déclarés se soustraient aux paiements de la TVA.

47 Les données de l'enquête auprès des entreprises menée par la Banque mondiale concernant l'Amérique latine estiment à 6 466 le nombre d'entreprises manufacturières déclarées établies dans 14 pays d'Amérique latine. Ces données montrent que 38.7 % de ces entreprises considèrent que la concurrence des entreprises informelles est l'un des trois principaux obstacles aux affaires, devant d'autres problèmes comme les taux d'imposition et l'accès aux crédits. Voir Gonzalez et Lamanna (2007).

Études du cabinet McKinsey Global Institute : la distribution alimentaire en Russie

McKinsey Global Institute (MGI) a étudié l'impact de l'économie informelle sur la productivité de plusieurs secteurs. L'examen de la productivité de la distribution alimentaire en Russie révèle que les entreprises informelles constituent un obstacle majeur à la croissance de la production et de la productivité[48]. Par exemple, les magasins modernes de vente alimentaire au détail en Russie ne parviennent pas à gagner des parts de marché sur les petites échoppes, les marchés de gros en plein air, les kiosques alimentaires et autres petits magasins moins productifs parce que ces derniers tirent parti d'une fiscalité allégée et vendent souvent des produits contrefaits ou importés illégaux. Malgré leur plus petite taille, les entreprises informelles possèdent un avantage de coût de 13 % par rapport aux supermarchés plus grands et plus productifs. MGI souligne que si les lois étaient appliquées de la même façon aux petites entreprises informelles et aux grandes entreprises déclarées, les détaillants informels seraient privés de leur seule source d'avantage compétitif : leur capacité à proposer des prix bas. En réalité, ils vendraient leurs produits 5 % plus chers.

À Obninsk, MGI a étudié l'effet d'une réduction de la paperasserie et de la décision de la ville de mettre en œuvre une politique fiscale plus efficace. Les résultats montrent qu'une fois les changements adoptés, les détaillants modernes ont rapidement gagné des parts de marché et 10 % des vendeurs alimentaires traditionnels ont fermé. En outre, les distributeurs restants ont modernisé leur offre de services grâce à une meilleure présentation des marchandises et à un allongement des horaires d'ouverture.

Innovation et propriété intellectuelle. Le travail informel peut aussi réduire les incitations des entreprises formelles à innover, à adopter de nouvelles technologies ou à développer des marques. L'élaboration de nouvelles méthodes de travail et technologies et l'investissement dans des méthodes et technologies développées par d'autres sont des investissements dont les retombées doivent être prévisibles. Mais, compte tenu des avantages dont bénéficient les entreprises informelles en termes de coûts, ces retombées seront moins probables. Dans certains cas, les entreprises informelles vendent des produits qui violent les droits d'auteurs détenus par des entreprises formelles ou qui emploient des brevets illégaux. Ces activités découragent les entreprises formelles de créer de la propriété intellectuelle car les retombées financières deviennent moins intéressantes[49].

5.3. Études sur la croissance globale et sur la productivité des entreprises

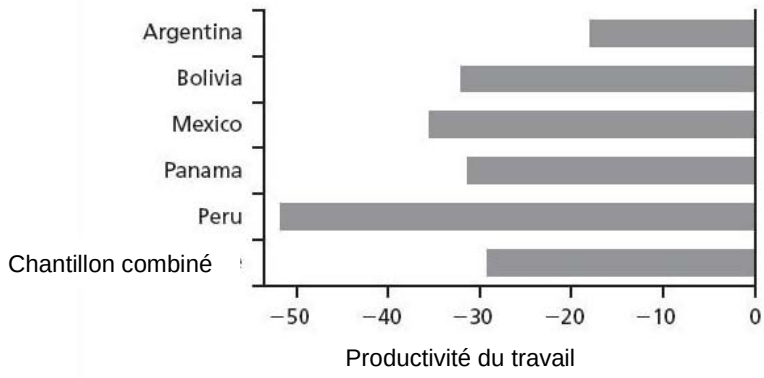
Des auteurs ont utilisé les données microéconomiques provenant de la base de données de l'enquête auprès des entreprises administrée par la Banque mondiale pour déterminer s'il existe des écarts de productivité entre les entreprises qui ont toujours opéré dans le secteur formel et celles qui ont débuté leurs activités sans être déclarées mais ont ensuite rejoint l'économie formelle. D'après les éléments qui figurent dans le graphique 2, une fois effectués les ajustements statistiques requis pour tenir compte d'une série de facteurs influant sur la productivité, les entreprises qui débutent leurs activités sans être déclarées sont beaucoup moins productives que celles qui ont toujours été déclarées. Comme l'expliquent les auteurs de l'étude, « celles qui débutent leurs activités sans s'enregistrer se retrouvent au bas de l'échelle de productivité des secteurs et régions concernés. L'écart de productivité du travail entre ces entreprises et celles qui ont toujours été déclarées est de 29 % en moyenne pour sept pays d'Amérique latine et des Caraïbes »[50].

48 Voir McKinsey Global Institute, *Unlocking Economic Growth in Russia*, octobre 1999.

49 Farrell (2004) observe que les entreprises de logiciels non déclarées s'approprient innovations et droits d'auteur sans payer les droits afférents, ce qui peut réduire de 90 % la productivité et la rentabilité du secteur formel.

50 Voir Perry *et al*. (2008)

Graphique 2 : Effet estimé de l'emploi informel sur la productivité du travail[51]



Note : ce graphique rend compte de coefficients relatifs aux indicateurs de l'économie formelle dans des régressions du log de la production par travailleur sur une variable indicatrice correspondant à l'absence de déclaration au moment du démarrage des activités, en tenant compte de la taille de l'entreprise, de la durée d'exercice, du secteur et de la région.

Les estimations réalisées au niveau des entreprises susmentionnées et les études du cabinet McKinsey suggèrent que les écarts de productivité entre entreprises formelles et informelles peuvent être considérables[52]. Ces études montrent que le transfert de la production d'entreprises non déclarées et peu productives vers des entreprises déclarées plus productives ou la régularisation d'entreprises non déclarées pourrait générer des gains d'efficience.

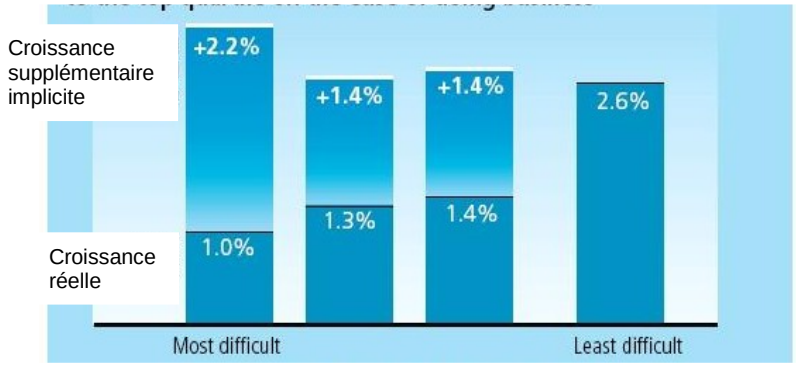
Certaines études macroéconomiques montrent que les retombées des réformes réglementaires sur la croissance économique annuelle sont considérables. Djankov *et al.* (2004) constatent que si les pays amélioraient tous les aspects des indicateurs DBI et accédaient au quartile supérieur, leur taux de croissance connaîtrait une forte augmentation. Le passage des trois quartiles inférieurs au quartile supérieur des DBI s'accompagnerait d'un gain de croissance annuelle allant de 1.4 % à 2.2 % (voir le graphique 3).

[51] De Perry *et al*. (2007).

[52] Pour un résumé de plusieurs études réalisées par McKinsey Global Institute, voir Lewis (2004).

Graphique 3 : La facilité de faire des affaires est associée à un gain de croissance[53]

Croissance annuelle supplémentaire générée par une amélioration hypothétique avec passage au quartile supérieur de la facilité de faire des affaires



Pays classés en fonction de la facilité de faire des affaires, quartiles

Note : l'analyse tient compte du revenu, des dépenses publiques, des taux d'inscription dans l'enseignement primaire et secondaire, de l'inflation, des investissements, des régions et des conflits civils. Les relations sont significatives au seuil de 5 %.

Cette étude montre que les bénéfices induits par les réformes réglementaires sont de deux ordres. Premièrement, les entreprises tirent parti d'un environnement réglementaire simplifié, qui leur permet de réorienter leurs ressources vers leurs activités fondamentales, c'est-à-dire la production et la vente de biens et de services. Deuxièmement, les pays qui réduisent les obstacles pour les entreprises s'autorisent à consacrer moins de ressources à leur réglementation et à les utiliser pour offrir de meilleurs services aux citoyens.

Malgré la croyance répandue que les entreprises non déclarées freinent la croissance économique, des études empiriques récentes portant sur différents pays produisent des résultats incohérents ou statistiquement non significatifs. Par exemple, selon les estimations (statistiquement significatives) de Schneider, l'expansion de l'économie informelle est associée à une *augmentation* du taux de croissance du PIB dans les pays de l'OCDE comme dans les pays en transition, tandis que pour les pays en développement, la progression de l'économie informelle s'accompagne d'une *diminution* du taux de croissance du PIB[54].

Dans leur analyse de pays d'Amérique latine, Perry *et al.* (2007) constatent que l'informalité réduit le taux de croissance du PIB. Ils observent que lorsque l'économie informelle progresse de 10 %, le taux de croissance global du PIB baisse de 0.6 % : si le secteur informel se contractait de 10 %, 10 ans plus tard, l'économie aurait progressé de 6 % grâce au seul impact sur la croissance. Toutefois, leurs estimations ne sont pas statistiquement pertinentes au seuil de 5 %.

6. Application du droit de la concurrence et économie informelle

Les publications qui mesurent l'effet de l'emploi informel sur les efforts d'application du droit de la concurrence sont rares. Les contributions des pays à cette table ronde indiquent que, dans certains cas, des

53 Voir Djankov *et al*. (2004).

54 Schneider (2005) allègue que les entreprises peuvent être écrasées par les taxes et les règlements dans les pays à revenu élevé, de sorte que l'expansion de l'économie parallèle stimule l'économie officielle grâce aux sommes supplémentaires qui y sont dépensées. Mais d'un autre côté, il fait valoir que dans les pays en développement, l'expansion de l'économie parallèle érode l'assiette fiscale et réduit l'offre de biens et de services publics, comme les infrastructures, ce qui pénalise l'économie officielle.

actions en justice ont été engagées afin de lutter contre la concurrence déloyale des entreprises non déclarées. Dans un cas, les autorités ont dû examiner des arguments de défense selon lesquels les ententes entre entreprises déclarées sont une parade justifiée à la concurrence déloyale des entreprises non déclarées. Dans un autre cas, les ventes non déclarées ont influé sur le type de données utilisées pour définir les marchés et évaluer les parts de marché. La section suivante examine ces aspects plus en détail.

6.1. Actions menées par les autorités de la concurrence pour combattre l'économie informelle

Certaines autorités de la concurrence ont engagé des actions contre ce qu'elles considèrent être des réglementations publiques trop contraignantes et la tarification excessive et discriminatoire de services relevant du monopole exclusif de l'État. Parfois aussi, les autorités de la concurrence ont milité pour la suppression d'exemptions fiscales ou intenté des actions contre les entreprises qui se soustraient à l'impôt et livrent donc une concurrence déloyale aux entreprises déclarées. Les paragraphes suivants présentent trois cas représentatifs issus des contributions à cette table ronde.

- *Ukraine*. Le Comité anti-monopole de l'Ukraine (ACU) peut traduire en justice les organismes publics du pays, à l'exception du gouvernement national, du Parlement et de la banque nationale. Par exemple, dans son enquête sur les services publics chargés de l'autorisation des activités commerciales, il a récemment détecté plus de 1 500 infractions au droit national de la concurrence. Ces infractions impliquaient des prix élevés ou discriminatoires et l'imposition de conditions contractuelles sans lien avec l'objet du contrat. La contribution de l'Ukraine estime que ces actions en justice luttent contre l'économie souterraine en faisant baisser le prix des services et en mettant toutes les entreprises sur un pied d'égalité, ce qui dissuade d'opérer dans le secteur informel. Plus de 260 règlements publics dans des domaines tels que l'interdiction illégale de créer une entreprise ou des obstacles pratiques à cette création ont été supprimés[55]. L'ACU juge que la levée de ces restrictions encouragera les entreprises à rejoindre l'économie formelle.

- *Bulgarie*. En 2005, la Commission bulgare de protection de la concurrence (CPC) a réalisé une étude de marché sur le blé moulu, la farine de blé et le pain à la farine de blé. L'enquête a révélé que de nombreuses boulangeries n'étaient pas enregistrées et fabriquaient souvent du pain dans des locaux qui ne respectaient pas les normes requises. La CPC a conclu que l'économie informelle détenait un avantage concurrentiel indu en ne payant pas la TVA sur les ventes de blé[56]. Elle a recommandé à l'État d'obliger tous les producteurs de farine à s'enregistrer en vertu de la législation sur la TVA afin de faire « sortir de l'ombre » les producteurs illégitimes et de placer tous les participants au marché sur un pied d'égalité[57]. La CPC estime que cela réduirait le nombre d'entreprises qui sous-déclarent leurs revenus ou échappent à d'autres taxes et obligations.

- *Chili*. En 2000, la Commission chilienne de la concurrence a constaté qu'une agence de voyage se livrait à une concurrence déloyale en négligeant de s'acquitter de taxes sur les billets d'avion

55 Voir la contribution de l'Ukraine.

56 On prétend souvent que les régimes de TVA font obstacle à l'économie informelle dans la mesure où les entreprises ont besoin (et exigent) des factures de leurs fournisseurs pour prouver aux contrôleurs des impôts qu'elles ont bien payé la TVA due.

57 Avant la recommandation de la CPC, les entreprises réalisant un chiffre d'affaires annuel inférieur à 50 000 leva ne pouvaient pas s'enregistrer en vertu de la loi sur la TVA. Après cette recommandation, ces entreprises pouvaient opter pour l'enregistrement volontaire au régime de la TVA.

vendus au public. La Commission a révélé que cette agence de voyage finançait ses prix bas en ne payant pas ses taxes et lui a infligé une amende[58].

6.2. L'informalité nuit à l'application du droit de la concurrence

Les actions coercitives que les autorités de la concurrence peuvent mener pour lutter contre l'économie informelle sont parfois limitées. La contribution de l'Ukraine en donne une illustration frappante : le Comité anti-monopole de l'Ukraine (ACU) n'est pas compétent pour engager des actions coercitives à l'encontre d'entreprises non enregistrées. Cela signifie que même si plusieurs entreprises clandestines constituent une entente par ailleurs illégale, l'ACU n'aurait pas le pouvoir de mettre un terme à leurs agissements.

Bien que ce cas ne soit pas fréquent, l'informalité aura probablement davantage d'incidences sur la manière dont une autorité évaluera un problème de concurrence. La définition du marché et l'attribution des parts de marché peuvent être difficiles même lorsque les entreprises informelles ne sont pas en cause. Lorsque des entreprises sous-déclarent leurs ventes, cela peut empêcher un calcul exact des parts de marché ou une définition claire du marché. De manière plus générale, lorsque des participants du secteur non structuré sont déterminés à rejoindre le marché réglementé pertinent, leur production doit être prise en compte, tout comme celle des entreprises déclarées. Les autorités chargées d'appliquer le droit de la concurrence doivent également déterminer s'il est probable qu'un marché réglementé distinct réunissant exclusivement des entreprises formelles existe. Par exemple, la discrimination par les prix à l'égard des consommateurs qui veulent acheter des biens et des services produits légalement peut constituer un motif d'inquiétude[59].

Toutefois, les contributions à la table ronde ne renseignent guère sur l'approche suivie par les autorités de la concurrence pour faire face à ces problèmes. L'Égypte précise que des entretiens peuvent être organisés pour réunir des informations sur les producteurs informels[60], mais rares sont les contributions qui examinent des affaires concrètes, et plus rares encore celles qui décrivent en détail la manière dont les problèmes ont été traités. Des cas abordés dans deux rapports sont décrits ci-dessous.

- *Bulgarie*. La Commission bulgare de protection de la concurrence (CPC) a récemment analysé la fusion de deux fabricants de béton prêt à l'emploi. Des ventes non déclarées et l'absence de statistiques officielles compliquaient la définition du marché et le calcul des parts de marché. La CPC a tenté de se baser sur les achats de matières premières pour calculer et évaluer les parts de marché des différents producteurs de béton. Elle a ainsi réuni des informations sur les ventes de ciment et d'autres matériaux inertes pour juger des mérites de la fusion. Elle a conclu que les données sur les ventes des producteurs nationaux de ciment aux producteurs de béton de la région fournissaient des informations relativement détaillées sur la consommation totale de ciment dans la région lui permettant d'attribuer des parts de marché aux différents producteurs[61].

- *Turquie*. L'Autorité turque de la concurrence (TCA) a examiné de nombreuses affaires impliquant des entreprises non déclarées. Dans une de ces affaires, le prix de base du pain et de la pita était fixé par entente entre les producteurs, prétendument pour combattre la concurrence

58 Voir la contribution du Chili.

59 La contribution des États-Unis indique que le ministère de la Justice a approuvé la création d'une coentreprise entre deux grandes maisons de disques en se fondant en partie sur la taille bien connue du secteur informelle dans l'industrie musicale.

60 Voir la contribution de l'Égypte.

61 Voir la contribution de la Bulgarie.

déloyale d'entreprises informelles. La TCA a rejeté ces arguments et jugé que la fixation d'un prix de base n'était pas nécessaire pour prévenir l'économie informelle. Dans une autre affaire dans le secteur des batteries usagées, la TCA a rejeté l'argument selon lequel l'impact d'agissements anticoncurrentiels d'entreprises déclarées sur les entreprises non déclarées n'entravait pas la concurrence[62].

7. Renforcer la concurrence en réduisant la taille de l'économie informelle

Cette partie du document souligne les domaines sur lesquels les responsables politiques doivent cibler leurs efforts afin de réduire la taille de l'économie informelle, en abaissant les coûts d'entrée dans le secteur formel et en maximisant les avantages liés à l'exercice déclaré d'une activité commerciale. En suivant une approche mesurée mais déterminée (surtout si le secteur informel est très développé), les pouvoirs publics peuvent améliorer la concurrence et la productivité. Pour ce faire, ils devront souvent agir sur plusieurs fronts afin de réduire de manière significative la taille de l'économie informelle.

7.1. La baisse des coûts liés à l'exercice d'une activité déclarée augmente la productivité et la concurrence

Mettre en œuvre un programme complet de réexamen des réglementations. Afin d'accroître la productivité de l'économie et de mieux exploiter les avantages d'une concurrence vigoureuse, les pouvoirs publics pourraient envisager d'engager un réexamen complet des réglementations[63]. La Liste de référence commune APEC-OCDE sur la réforme de la réglementation pourrait constituer le canevas de ce réexamen. Elle met en lumière les principaux aspects à étudier pour évaluer les dispositifs législatifs et réglementaires existants ou pour élaborer des politiques de réglementation. L'objectif général de l'analyse d'impact de la réglementation étant d'améliorer les réglementations et pas forcément de réduire leur nombre, elle peut abaisser considérablement les coûts de régularisation et inciter les entreprises non déclarées à rejoindre l'économie formelle ou aider les entreprises déjà déclarées à le rester. Des efforts à grande échelle sont susceptibles de produire le plus d'effets, en remplaçant des réglementations anciennes, inefficientes et coûteuses par des politiques éclairées qui, associées à une application rigoureuse du droit de la concurrence visant à s'attaquer aux comportements ouvertement anticoncurrentiels, intensifieront la concurrence dans l'économie formelle en encourageant l'entrée et l'investissement.

Réduire les distorsions sur les marchés de produits. Les restrictions publiques sur les marchés peuvent étouffer la concurrence et la productivité. Les politiques qui mettent toutes les entreprises sur un pied d'égalité peuvent accroître l'intensité concurrentielle et la productivité. Si, à l'inverse, les politiques mises en place confèrent des avantages spéciaux à certaines entreprises, elles risquent de nuire à la concurrence et à la productivité sectorielle. Par exemple, les politiques publiques qui restreignent les horaires d'ouverture des entreprises en fonction de leur taille, limitent l'octroi de licences ou la vente de produits, établissent différents taux d'imposition ou différentes exemptions pour des entreprises qui vendent le même produit ou imposent des restrictions d'urbanisme, risquent de protéger les petites entreprises informelles de la concurrence d'entreprises plus grandes, plus productives et plus efficientes.

Les pouvoirs publics pourraient envisager d'utiliser le Manuel pour l'évaluation d'impact sur la concurrence de l'OCDE en vue d'accroître la concurrence et la productivité. Ce Manuel offre une méthodologie générale pour déceler les restrictions qui sont superflues et pour élaborer d'autres solutions

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62 Voir la contribution de la Turquie.

63 Djankov *et al*. décrivent les programmes de réexamen de la réglementation mis en œuvre par l'Australie, la Corée, la Hongrie, le Mexique, la Pologne et la République tchèque. Voir www.oft.gov.uk/shared_oft/reports/comp_policy/oft876.pdf pour un exemple du Royaume-Uni.

moins restrictives ne sacrifiant pas pour autant les objectifs d'action[64]. Les autorités de la concurrence peuvent jouer un rôle important dans ce processus en aidant les pouvoirs publics à identifier les réglementations existantes qui restreignent inutilement la concurrence ou les responsables de l'élaboration des politiques à concevoir de nouvelles réglementations qui brident le moins possible la concurrence tout en atteignant leurs objectifs.

Réduire ou supprimer les règlements inutiles sur le travail. Une réglementation du travail excessivement contraignante augmente le coût d'emploi des travailleurs déclarés et réduit la flexibilité du marché du travail. Elle se répercute aussi sur la capacité des entreprises locales de faire face à des importations bon marché, ce qui nuit à l'emploi de la main-d'œuvre dans l'économie formelle[65]. Par conséquent, les pouvoirs publics pourraient examiner en priorité la réglementation du travail, aspect souvent traité dans les ouvrages consacrés à l'économie informelle. Par exemple, des lois qui fixent un salaire minimum excessivement élevé peuvent freiner l'emploi dans l'économie formelle. Les règlements qui obligent les entreprises à proposer des contrats à durée indéterminée à leurs salariés ou qui sont trop rigides pour s'adapter à des situations spécifiques sur le marché peuvent conduire les entreprises à embaucher « en douce » ou à ne pas embaucher du tout. Les coûts de licenciement doivent aussi être abaissés, surtout en Afrique. Pour alléger le coût de l'emploi, l'Espagne a autorisé employeurs et salariés à négocier directement les conditions des contrats de travail sans devoir se soumettre à la réglementation. Elle a également libéralisé les règles relatives au travail temporaire et aux agences de travail temporaire[66]. L'Australie, la Géorgie, la Grèce et la Lituanie ont récemment pris des mesures visant à assouplir la réglementation sur les heures supplémentaires. L'Argentine, l'Arménie, la Géorgie et l'ex-République yougoslave de Macédoine ont soit écourté le préavis de licenciement obligatoire, soit revu les indemnités de licenciement à la baisse. Ces programmes encouragent les entreprises à optimiser les conditions d'emploi de la main-d'œuvre et favorisent donc la création d'emplois dans l'économie formelle.

Alléger les régimes d'imposition trop pesants. Lorsqu'elles prennent des décisions d'investissement, les entreprises examinent le taux de rendement après impôts. C'est pourquoi des régimes fiscaux trop pesants entravent les investissements productifs et pèsent sur l'innovation et donc sur la concurrence. En 2005/06, au moins 23 pays ont abaissé le taux de leur impôt sur les bénéfices. De nombreux autres se sont efforcés de réduire le nombre total d'impôts, ont simplifié leur code des impôts ou introduit les déclarations électroniques en ligne. Ainsi, l'Égypte a récemment adopté un taux unique de 20 % pour l'impôt sur le bénéfice des sociétés, au lieu des taux de 32 % et 40 % en fonction du secteur. Elle a également supprimé toutes les exonérations temporaires et exemptions géographiques et sectorielles (environ 3 000 au total) et introduit le dépôt électronique des déclarations. Grâce à ces changements, le nombre de déclarations d'impôts a doublé en seulement un an[67]. Les régimes fiscaux simples ont d'autres vertus : les entreprises respectent plus facilement la législation et peuvent réaffecter leurs ressources à d'autres priorités. Pour aider les petites entreprises à honorer leurs obligations fiscales, le Brésil a mis en œuvre le programme SIMPLES en 2001. Ce programme fusionne huit paiements d'impôts distincts en un seul paiement mensuel. On estime qu'il a permis d'augmenter de 13 % le nombre d'entreprises enregistrées dans le secteur du commerce de détail par rapport à l'année précédant sa mise en œuvre.

Atténuer l'impact global des droits excessivement élevés. Le succès de la réforme passe par la suppression des obstacles à la création d'entreprise. Les pouvoirs publics ont de nombreuses bonnes raisons de prélever des droits auprès des entreprises, par exemple pour assurer la santé et la sécurité des

64 Voir www.oecd.org/competition

65 Il existe parfois une distinction subtile entre l'obligation légitime de traiter des problèmes d'emploi et l'obligation « excessivement contraignante ».

66 Voir Capp, Elstrodt et Jones (2005).

67 Banque mondiale (2007).

salariés ou le respect des prescriptions de protection de l'environnement. Étant donné que l'impact cumulé de ces droits peut être important, les responsables publics doivent faire en sorte que l'incidence globale ne soit pas trop lourde, afin que les entreprises ne soient pas tentées de rejoindre le secteur informel ou dissuadées de se déclarer au moment de leur création. Imposer des droits élevés au seul titre de l'exercice d'une activité commerciale peut aussi brider l'investissement, l'innovation et la compétitivité. Pour remédier à ces craintes, la Belgique a récemment supprimé les droits d'enregistrement des entreprises et la Géorgie a réduit de 90 % le capital minimum obligatoire. Le Bénin et le Niger ont également supprimé l'obligation pour les entreprises d'acquitter des taxes avant de débuter leurs activités[68].

Rationaliser les processus administratifs. La longueur des délais et le coût des procédures de création d'une entreprise sont des obstacles que les entreprises doivent surmonter pour rejoindre l'économie formelle. Dans certains pays, seul l'entrepreneur le plus déterminé pourra immatriculer son entreprise (il faut 152 jours au Brésil)[69]. Les politiques de la concurrence avisées reconnaissent que faciliter l'entrée et la sortie du marché stimule la concurrence et favorise les investissements productifs. Dans les secteurs très concentrés en particulier, les pouvoirs publics doivent agir afin de lever les obstacles à l'entrée sur le marché structuré. Pour ce faire, ils doivent rationaliser les processus administratifs. La création de « guichets uniques » qui utilisent les technologies de l'Internet, comme à Singapour, peut abaisser considérablement les coûts d'enregistrement. Les guichets uniques réunissent, en un même lieu, tous les services relatifs à l'enregistrement d'une entreprise, qu'il s'agisse de satisfaire aux obligations fiscales, de sécurité sociale ou de droit du travail ou aux obligations de licence. Les procédures en ligne rendent les rencontres physiques superflues, ce qui réduit considérablement les possibilités de nuisance de fonctionnaires corrompus. Selon la Banque mondiale, plus de 25 % des réformes mises en œuvre dans le monde au cours des cinq dernières années portent sur la réglementation de la création d'entreprise. D'après d'autres éléments réunis par la Banque mondiale, après les réformes, l'entrée de nouvelles entreprises s'est accrue de 78 % dans l'ex-République yougoslave de Macédoine, 55 % en Géorgie et 25 % en Lituanie[70]. L'encadré ci-dessous illustre des réformes récentes menées avec succès[71].

68 Banque mondiale (2007).

69 Voir la base de données de *Doing Business* 2008 (www.doingbusiness.org)

70 Voir *Doing Business* 2008, Celebrating Reform, étude de cas, p. 2.

71 Voir *Doing Business* 2008, Celebrating Reform, étude de cas.

Guichets uniques en Azerbaïdjan et au Portugal

L'Azerbaïdjan et le Portugal ont simplifié le processus de création d'entreprise dans l'économie formelle.

Avant 2008, les entrepreneurs désireux de créer une entreprise en Azerbaïdjan devaient s'enregistrer auprès de cinq agences différentes, accomplir 15 procédures et remplir 33 documents. En moyenne, ce processus prenait plus de 60 jours. Depuis la réforme de grande ampleur datant de janvier 2008, les entreprises n'ont plus que sept documents à soumettre et six procédures à accomplir auprès du nouveau Registre public des entreprises aux fonctions polyvalentes.

Le Portugal a mené à bien une transformation analogue. Avant 2005, il fallait 78 jours pour créer une entreprise. Un entrepreneur devait accomplir 11 procédures et remplir 20 formulaires, et les coûts d'enregistrement atteignaient près de 2 000 €. En 2005, le gouvernement portugais a mis en place un système de guichet unique pour la création d'entreprise ; aujourd'hui, le Portugal est l'un des pays au monde où il est le plus facile de créer son entreprise, puisqu'il ne faut que six jours en moyenne et que les coûts d'enregistrement sont de 600 €.

Système d'enregistrement en ligne à Singapour

À Singapour, des milliers d'entreprises et de sociétés sont constituées chaque année ; avant 2003, le processus était long, pesant et trop dépendant de la saisie manuelle de données, engendrant frustration et retards. Pour améliorer l'efficience et la qualité de service, Singapour a mis en place Bizfile, un système d'enregistrement, de dépôt et de recherche documentaire sur l'Internet. Cette initiative s'inscrivait dans le programme du gouvernement pour développer les technologies de l'information et mettre en ligne le plus grand nombre de services publics possible afin d'améliorer l'expérience des clients. Les informations peuvent désormais être mises à jour dans la demi-heure qui suit l'enregistrement, contre 14 à 21 jours avant la réforme. Le délai d'enregistrement d'une nouvelle entreprise est passé de 24 heures à 15 minutes, et celui de constitution d'une société de cinq jours à seulement 15 minutes. Bizfile fait faire des économies à l'administration qu'elle répercute sur les entreprises en réduisant les droits d'enregistrement. Ces droits ont été ramenés de 100 à 50 S$; ceux de constitution d'une société ont été abaissés de 1 200–35 000 S$ à la somme forfaitaire de 300 S$. Bizfile a permis de réduire les droits annuels au titre du renouvellement des enregistrements de 25 à 20 S$.

Faciliter l'accès des entreprises à l'information. Les pouvoirs publics devraient réexaminer leurs pratiques pour informer les entreprises de la marche à suivre afin de régulariser leurs activités. Multiplier les lieux d'information (auprès de différentes agences ou sur différents sites Internet) est probablement inutile. L'administration ne doit pas penser que les entreprises sauront localiser l'information facilement ; elle doit au contraire s'efforcer de centraliser la fourniture des informations, dans un format facile d'accès, sur toutes les obligations qui incombent aux différents types d'entreprises souhaitant s'enregistrer. La centralisation de l'information peut réduire les risques de corruption dans le système.

7.3. Autres solutions pour accroître la productivité et la concurrence et combattre l'économie informelle

Renforcer la concurrence et la productivité grâce aux marchés publics. Les marchés publics offrent des débouchés considérables aux entreprises car ils représentent souvent plus de 15 % du PIB. Compte tenu des obligations publiques d'enregistrement des entreprises, les marchés publics peuvent servir à encourager les entreprises à s'immatriculer, à opérer dans le secteur formel et à procéder à des investissements productifs. Par conséquent, les pouvoirs publics doivent mettre tout en œuvre pour abaisser les coûts d'enregistrement et faciliter l'accès aux marchés publics, par exemple en utilisant davantage les technologies de l'Internet et en évitant les restrictions inutiles qui limitent le nombre de soumissionnaires qualifiés. Ils doivent aussi envisager de s'approvisionner auprès du secteur privé le cas échéant. Administration et consommateurs tireront profit de ce processus : pour l'administration, l'avantage est lié à la baisse des coûts d'approvisionnement et à l'augmentation des recettes fiscales générées par les

entreprises nouvellement enregistrées. Les consommateurs profitent du fait que les biens et services vendus à l'État sont souvent achetés sur le marché libre. En définitive, toutes ces initiatives devraient générer une concurrence plus vigoureuse et plus saine[72].

Faciliter l'accès au capital. Dans une économie concurrentielle performante, l'accès au capital est une ressource essentielle. Toute restriction inutile de cet accès peut peser lourdement sur la productivité, l'innovation et la concurrence sur les marchés, et dissuader les entreprises de se déclarer. Les pouvoirs publics peuvent élargir l'accès au crédit en révisant les lois sur les garanties bancaires et les pouvoirs d'exécution, et en améliorant les informations sur le crédit. Si elles sont de qualité, les lois sur les garanties et les informations sur le crédit peuvent doper la productivité en garantissant l'accès à l'emprunt aux entreprises méritantes. En élargissant l'éventail des actifs que les entreprises peuvent utiliser en garantie, on augmente le nombre d'entreprises bénéficiant de prêts bancaires et le montant de ces prêts. C'est souvent un facteur très important pour les microentreprises et les entreprises non structurées. En bénéficiant d'un meilleur accès au crédit, les entreprises informelles auront davantage intérêt à se déclarer. Les pays peuvent également agir en vue d'étoffer les informations fournies par les systèmes de crédit ainsi que la qualité de ces informations. La République dominicaine a récemment levé l'obligation d'accord des consommateurs avant de transmettre des renseignements aux agences d'évaluation du crédit. Elle a également mis en place une nouvelle procédure de vérification des données qui permet aux consommateurs de consulter leur historique en tant qu'emprunteurs. Dans la même veine, El Salvador vient de donner aux consommateurs accès aux dossiers concernant leurs emprunts[73]. L'accès au crédit peut aussi être amélioré en supprimant le plafonnement des taux d'intérêt qui empêchait jusqu'alors les petites entreprises à haut risque d'obtenir un prêt, ce qui les encourageait à se tourner vers des sources informelles.

Renforcer la discipline fiscale et réglementaire. L'expérience en Amérique latine suggère qu'une des principales raisons qui incitent les entreprises à rejoindre l'économie formelle est la crainte des amendes et le souhait général de se conformer à la loi[74]. Cela autorise à penser qu'un renforcement des programmes de contrôle et de recouvrement de l'impôt pourrait lutter contre l'économie informelle. Des sanctions sévères ont un puissant effet dissuasif contre la fraude fiscale. Les États-Unis et l'Italie infligent de lourdes amendes aux contrevenants et indexent leur montant sur les bénéfices indûment réalisés. Les États-Unis ont également accru la responsabilité pénale des comptables fiscalistes dans les affaires de fraude fiscale, et l'Italie a instauré des amendes à l'encontre des vérificateurs qui valident des achats de produits et services sans facture correspondante. Des initiatives similaires pourraient être conduites dans d'autres domaines réglementaires afin de renforcer les actions coercitives. Les pouvoirs publics devraient aussi envisager de partager les bases de données informatisées des différents services de contrôle. Le Chili a récemment intensifié la coordination entre les administrations des douanes et des impôts, ainsi qu'avec le ministère des Finances. Il a constitué une unité chargée des gros contribuables et alourdi les pénalités. Grâce à ces mesures, le taux de fraude à la taxe sur la valeur ajoutée a chuté de 20 % en 2000 à 11 % en 2005/06[75]. Dans la même veine, en 2005, le Royaume-Uni a fusionné l'administration fiscale et les services des douanes et accises pour constituer le HMRC. Les exonérations de TVA en faveur des petites entreprises peuvent avoir des effets pervers en encourageant l'économie souterraine dans certains cas,

72 Outre les marchés publics, les programmes de formation soutenus par les pouvoirs publics ou les programmes d'aide juridique aux petites entreprises pourraient être développés.

73 Banque mondiale (2007).

74 Voir Perry *et al.,* (2007).

75 OCDE (2008), *Tackling Business and Labour Informality in Chile*.

lorsqu'un entrepreneur ferme son entreprise pour éviter de payer la TVA, puis crée une nouvelle entreprise sous un autre nom[76].

Adapter la méthode au secteur concerné. Dans certains secteurs tels que la banque, l'acier et les télécommunications, le travail informel est souvent l'exception et non la règle. Dans ces secteurs, il vaut peut-être mieux privilégier les programmes de discipline fiscale ciblant les entreprises qui sous-déclarent leurs ventes. Toutefois, dans d'autres secteurs, comme le commerce de détail et la construction résidentielle, le travail informel est beaucoup plus répandu. Dans ces circonstances, des programmes plus ambitieux peuvent être de mise. Par exemple, la Pologne a lancé un programme qui associe un taux d'imposition unique pour les formats de distribution traditionnels et modernes et l'attribution de moyens conséquents pour lutter contre la fraude fiscale. En réaction, l'investissement direct étranger dans le secteur de la distribution moderne a fortement augmenté[77].

Soutenir les efforts de réforme. Dans l'idéal, la mise en œuvre des réformes doit s'accompagner de campagnes promotionnelles destinées à informer les entreprises des mesures engagées, et d'un travail de suivi et d'évaluation de l'impact des réformes a posteriori. Par exemple, El Salvador a organisé deux manifestations auxquelles le Président et le Vice-président ont assisté[78], contribuant ainsi à accroître la couverture médiatique et à promouvoir les efforts de réforme. La Hongrie a organisé des « journées de la déréglementation » et un concours national récompensant par des prix les meilleures idées soumises par le public[79].

8. Conclusion

Sur le long terme, le recul du travail informel est profitable aux entreprises comme aux consommateurs et améliore l'efficacité de l'action publique, principalement parce qu'il entrave la productivité et l'innovation sur le marché. Des recherches révèlent que l'emploi informel freine la production économique totale et nuit à la croissance des pays en développement.

D'après les contributions à cette table ronde, rares sont les autorités de la concurrence qui ont recouru avec succès à des instruments coercitifs pour s'attaquer aux problèmes de concurrence impliquant l'économie informelle. On peut en déduire que d'autres aspects relatifs à l'application du droit doivent devenir prioritaires ; il est trop compliqué de prouver l'existence d'infractions au droit de la concurrence et les mesures coercitives risquent d'avoir un faible effet dissuasif. Par conséquent, les autorités de la concurrence doivent envisager d'axer leurs efforts sur les initiatives de défense de la concurrence qui visent à réduire la taille de l'économie informelle, avec le concours d'autres organismes publics.

Au vu de l'analyse exhaustive présentée dans ce document, les pouvoirs publics peuvent réduire la taille de l'économie informelle et des efforts résolus et durables ont toutes les chances d'être récompensés. De nombreux pays ont déjà pris des mesures efficaces pour alléger les réglementations trop contraignantes sur la fiscalité, le travail et les produits et ont rationalisé les procédures administratives nécessaires pour créer et exploiter une entreprise. Hormis l'effet potentiel de ces initiatives sur le processus concurrentiel, elles ont sans aucun doute incité les entreprises à rejoindre l'économie formelle ou à y rester.

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76 Voir la contribution de la Lituanie pour un exemple portant sur les entreprises de taxi. Dans cet exemple, des entreprises de taxi cessaient leurs activités lorsqu'elles approchaient du seuil de TVA, puis s'enregistraient à nouveau. Cette pratique portait préjudice aux entreprises de taxi déclarées.

77 Voir Capp, Elstrodt et Jones (2005).

78 Voir Banque mondiale (2007).

79 Voir Djankov *et al*., (2004).

Pour élaborer les instruments adéquats de lutte contre l'économie informelle, les pouvoirs publics doivent cibler en priorité les industries les plus touchées par ce phénomène et procéder secteur par secteur. Ils devraient également réviser en premier lieu les réglementations intersectorielles qui encouragent le développement de l'économie informelle. Les indicateurs *Doing Business* de la Banque mondiale peuvent constituer un instrument utile à cette fin. Pour être efficace, l'action des pouvoirs publics doit concilier les objectifs à long terme d'accroissement de la productivité et de renforcement de la concurrence avec les coûts d'ajustement à court terme susceptibles d'être encourus, comme une hausse du chômage et une forte contraction des dépenses des consommateurs. Cet impératif est particulièrement pertinent dans les pays où l'économie informelle est très étendue.

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ANNEXE A

ESTIMATIONS DE LA TAILLE DE L'ÉCONOMIE SOUTERRAINE

Le tableau suivant livre des estimations de la taille de l'économie souterraine pour 110 pays (Schneider, 2005) et du taux de croissance du PIB pour l'année 2000.

Pays	Économie souterraine 2000	Taux de croissance du PIB 2000
Afrique du Sud	28.4	5.58
Albanie	33.4	9.15
Algérie	34.1	5.05
Allemagne	16.3	5.24
Arabie Saoudite	18.4	8.86
Argentine	25.4	1.77
Arménie	46.3	8.16
Australie	15.3	4.21
Autriche	10.2	5.34
Azerbaïdjan	60.6	20.37
Bangladesh	35.6	8.58
Bélarusse	48.1	8.30
Belgique	23.2	6.13
Bénin	45.2	8.42
Bolivie	67.1	5.04
Bosnie-Herzégovine	34.1	0.00
Botswana	33.4	-2.06
Brésil	39.8	7.68
Bulgarie	36.9	9.30
Burkina Faso	38.4	4.66
Cameroun	32.8	8.45
Canada	16.4	6.17
Chili	19.8	8.51
Chine	13.1	9.92
Colombie	39.1	1.04
Corée	27.5	10.43
Costa Rica	26.2	-0.37
Côte d'Ivoire	39.9	0.77
Croatie	33.4	5.96
Danemark	18.2	6.34
Égypte	35.1	7.73
Émirats arabes unis	26.4	0.00
Équateur	34.4	3.98

Pays	Économie souterraine 2000	Taux de croissance du PIB 2000
Espagne	22.6	6.30
États-Unis	8.7	7.44
Éthiopie	40.3	8.01
Ancienne République féd. de Yougoslavie	29.1	0.00
Fédération de Russie	46.1	8.81
Finlande	18.3	7.91
France	15.3	5.32
Géorgie	67.3	8.20
Ghana	38.4	7.03
Grèce	28.6	7.18
Guatemala	51.5	6.03
Honduras	49.6	6.52
Hong Kong, Chine	16.6	14.26
Hongrie	25.1	7.63
Inde	23.1	6.35
Indonésie	19.4	6.96
Iran	18.9	7.14
Irlande	15.8	15.67
Israël	21.9	10.64
Italie	27.0	5.25
Jamaïque	36.4	4.10
Japon	11.3	4.78
Jordanie	19.4	4.57
Kazakhstan	43.2	16.14
Kenya	34.3	1.82
Lettonie	39.9	7.87
Liban	34.1	2.03
Lituanie	30.3	5.52
Madagascar	39.6	8.06
Malaisie	31.1	14.61
Malawi	40.3	4.25
Mali	41.0	6.86
Maroc	36.4	2.60
Mexique	30.1	9.09
Moldova	45.1	1.56
Mongolie	18.4	3.88
Mozambique	40.3	4.89
Népal	38.4	8.62
Nicaragua	45.2	7.25
Niger	41.9	2.45
Nigeria	57.9	6.89
Norvège	19.1	4.45
Nouvelle-Zélande	12.7	4.86

Pays	Économie souterraine 2000	Taux de croissance du PIB 2000
Ouganda	43.1	5.90
Ouzbékistan	34.1	7.86
Pakistan	36.8	7.05
Panama	64.1	2.27
Pays-Bas	13.0	5.94
Pérou	59.9	5.31
Philippines	43.4	6.28
Pologne	27.6	6.32
Portugal	22.6	6.00
République dominicaine	32.1	9.86
République kirghize	39.8	7.70
République slovaque	18.9	4.90
République tchèque	19.1	5.47
Roumanie	34.4	3.74
Royaume-Uni	12.6	5.97
Sénégal	43.2	8.08
Singapour	13.1	13.76
Slovénie	27.1	7.24
Sri Lanka	44.6	8.73
Suède	19.1	6.17
Suisse	8.8	5.37
Syrie	19.3	7.52
Tanzanie	58.3	7.00
Thaïlande	52.6	5.18
Tunisie	38.4	7.42
Turquie	32.1	10.05
Ukraine	52.2	8.48
Uruguay	51.1	1.24
Venezuela	33.6	5.06
Viet Nam	15.6	7.93
Yémen	27.4	12.64
Zambie	48.9	4.86
Zimbabwe	59.4	-5.58

ANNEXE B

CLASSEMENT GLOBAL DE LA FACILITÉ DE FAIRE DES AFFAIRES ET INDICATEURS RELATIFS À LA CRÉATION D'ENTREPRISE ISSUS DE LA BASE DE DONNÉES DES INDICATEURS *DOING BUSINESS* DE LA BANQUE MONDIALE.

Pays	Classement global - Facilité de faire des affaires[80]	Création d'entreprise			
		Procédures[81] (nombre)	*Durée (jours)*	*Coût (% du RNB[82] par habitant)*	*Capital minimum à verser (% du RNB par habitant)[83]*
Afghanistan	162	4	9	59.5	0
Afrique du Sud	32	6	22	6	0
Albanie	86	6	8	25.8	32.3
Algérie	132	14	24	10.8	36.6
Allemagne	25	9	18	5.6	42.2
Angola	168	8	68	196.8	39.1
Antigua-et-Barbuda	42	8	21	11.6	0
Arabie Saoudite	16	7	12	14.9	0
Argentine	113	15	32	9	3.7
Arménie	44	9	18	3.6	2.3
Australie	9	2	2	0.8	0
Autriche	27	8	28	5.1	52.8
Azerbaïdjan	33	6	16	3.2	0
Bahamas	55	7	31	9.8	0
Bahreïn	18	7	9	0.6	210.1
Bangladesh	110	7	73	25.7	0
Bélarusse	85	8	31	7.8	12.4
Belgique	19	3	4	5.2	19.9
Belize	78	9	44	51.1	0
Bénin	169	7	31	196	347
Bhoutan	124	8	46	8.5	0

80 Pour chaque pays, le classement correspond à la moyenne simple de ses classements en pourcentage pour chacune des 10 catégories étudiées dans *Doing Business* 2009.

81 Une procédure est définie comme toute interaction entre les fondateurs de l'entreprise et des parties extérieures. Cette définition étant très complexe, les lecteurs intéressés sont invités à consulter le site Internet de *Doing Business*.

82 RNB signifie revenu national brut.

83 Le versement obligatoire d'un capital minimum correspond à la somme que l'entrepreneur doit déposer dans une banque ou chez un notaire avant d'entamer la procédure d'enregistrement de l'entreprise ; et cela jusqu'à trois mois après la constitution en société, le montant enregistré étant exprimé en pourcentage du revenu par habitant du pays.

Pays	Classement global - Facilité de faire des affaires[80]	Création d'entreprise			
		Procédures[81] (nombre)	*Durée (jours)*	*Coût (% du RNB[82] par habitant)*	*Capital minimum à verser (% du RNB par habitant)[83]*
Bolivie	150	15	50	112.4	2.8
Bosnie-Herzégovine	119	12	60	30.8	36.3
Botswana	38	10	78	2.3	0
Brésil	125	18	152	8.2	0
Brunei	88	18	116	9.2	0
Bulgarie	45	4	49	2	47.8
Burkina Faso	148	5	16	62.3	458.8
Burundi	177	11	43	215	0
Cambodge	135	9	85	151.7	43.9
Cameroun	164	13	37	137.1	188
Canada	8	1	5	0.5	0
Cap-Vert	143	12	52	35.7	47.5
Chili	40	9	27	7.5	0
Chine	83	14	40	8.4	158.1
Cisjordanie et Gaza	131	11	49	69.1	56.1
Colombie	53	9	36	14.1	0
Comores	155	11	23	188.6	280.8
Congo	178	10	37	106.4	131.2
Corée	23	10	17	16.9	53.8
Costa Rica	117	12	60	20.5	0
Côte d'Ivoire	161	10	40	135.1	215.9
Croatie	106	8	40	11.5	16.6
Danemark	5	4	6	0	40.1
Djibouti	153	11	37	200.2	514
Dominique	74	5	14	25.5	0
Égypte	114	6	7	18.3	2
El Salvador	72	8	17	49.6	3.5
Émirats arabes unis	46	8	17	13.4	311.9
Équateur	136	14	65	38.5	12.7
Érythrée	173	13	84	102.2	396.7
Espagne	49	10	47	14.9	13.1
Estonie	22	5	7	1.7	23.7
États-Unis	3	6	6	0.7	0
Éthiopie	116	7	16	29.8	693.6
Fédération de Russie	120	8	29	2.6	2.2
Fidji	39	8	46	25.2	0
Finlande	14	3	14	1	7.4
France	31	5	7	1	0
Gabon	151	9	58	20.3	30.2
Gambie	130	8	27	254.9	0
Géorgie	15	3	3	4	0
Ghana	87	9	34	32.7	16.6

Pays	Classement global - Facilité de faire des affaires[80]	Création d'entreprise			
		Procédures[81] (nombre)	*Durée (jours)*	*Coût (% du RNB[82] par habitant)*	*Capital minimum à verser (% du RNB par habitant)[83]*
Grèce	96	15	19	10.2	19.6
Grenade	84	6	20	30.2	0
Guatemala	112	11	26	50.6	26.3
Guinée	171	13	41	135.7	476.9
Guinée équatoriale	167	20	136	101.7	15.4
Guinée-Bissau	179	17	233	257.7	1,015.00
Guyane	105	8	40	68.4	0
Haïti	154	13	195	159.6	26.6
Honduras	133	13	20	52.6	20
Hong Kong, Chine	4	5	11	2	0
Hongrie	41	4	5	8.4	10.8
Îles Marshall	93	5	17	17.3	0
Îles Salomon	89	7	57	53.6	0
Inde	122	13	30	70.1	0
Indonésie	129	11	76	77.9	74.2
Iran	142	8	47	4.6	1
Iraq	152	11	77	150.7	59.1
Irlande	7	4	13	0.3	0
Islande	11	5	5	2.6	13.6
Israël	30	5	34	4.4	0
Italie	65	6	10	18.5	9.7
Jamaïque	63	6	8	7.9	0
Japon	12	8	23	7.5	0
Jordanie	101	10	14	60.4	24.2
Kazakhstan	70	8	21	5.2	15.9
Kenya	82	12	30	39.7	0
Kiribati	79	6	21	64.6	34.9
Koweït	52	13	35	1.3	81.7
Lesotho	123	7	40	37.8	14.5
Lettonie	29	5	16	2.3	16.9
Liban	99	5	11	87.5	57
Libéria	157	8	27	100.2	0
Lituanie	28	7	26	2.7	35.9
Luxembourg	50	6	26	6.5	21.3
Macédoine, ex-République yougoslave	71	7	9	3.8	0
Madagascar	144	5	7	11	289.8
Malaisie	20	9	13	14.7	0
Malawi	134	10	39	125.9	0
Maldives	69	5	9	11.5	4.8
Mali	166	11	26	121.5	390.4

Pays	Classement global - Facilité de faire des affaires[80]	Création d'entreprise			
		Procédures[81] (nombre)	*Durée (jours)*	*Coût (% du RNB[82] par habitant)*	*Capital minimum à verser (% du RNB par habitant)[83]*
Maroc	128	6	12	10.2	52.3
Maurice	24	5	6	5	0
Mauritanie	160	9	19	33.9	422.6
Mexique	56	9	28	12.5	11
Micronésie	126	7	16	137.5	0
Moldova	103	9	15	8.9	13.4
Mongolie	58	7	13	4	58.5
Monténégro	90	15	21	4.4	0
Mozambique	141	10	26	22.9	122.5
Namibie	51	10	66	22.1	0
Népal	121	7	31	60.2	0
Nicaragua	107	6	39	121	0
Niger	172	11	19	170.1	702.1
Nigéria	118	8	31	90.1	0
Norvège	10	6	10	2.1	21
Nouvelle-Zélande	2	1	1	0.4	0
Oman	57	7	14	3.6	461.2
Ouganda	111	18	25	100.7	0
Ouzbékistan	138	7	15	10.3	17.7
Pakistan	77	11	24	12.6	0
Palaos	91	8	28	4.6	12.2
Panama	81	7	13	19.6	0
Papouasie-Nouvelle-Guinée	95	8	56	23.6	0
Paraguay	115	7	35	67.9	0
Pays-Bas	26	6	10	5.9	51.7
Pérou	62	10	65	25.7	0
Philippines	140	15	52	29.8	6
Pologne	76	10	31	18.8	168.8
Portugal	48	6	6	2.9	34.3
Puerto Rico	35	7	7	0.8	0
Qatar	37	6	6	9.1	75.4
Laos	165	8	103	14.1	0
Rép. dém. du Congo	181	13	155	435.4	0
République centrafricaine	180	10	14	232.3	513.9
République dominicaine	97	8	19	19.4	0
République kirghize	68	4	15	7.4	0.4
République tchèque	75	8	15	9.6	31.8
Roumanie	47	6	10	3.6	1.1
Royaume-Uni	6	6	13	0.8	0

Pays	Classement global - Facilité de faire des affaires[80]	Création d'entreprise			
		Procédures[81] (nombre)	*Durée (jours)*	*Coût (% du RNB[82] par habitant)*	*Capital minimum à verser (% du RNB par habitant)[83]*
Rwanda	139	8	14	108.9	0
Sainte-Lucie	34	6	20	22.6	0
Saint-Kitts-Et-Nevis	67	8	45	12.5	0
Saint-Vincent-et-les Grenadines	66	8	12	26.8	0
Samoa	64	9	35	39.8	0
Sao Tomé-et-Principe	176	10	144	88.9	0
Sénégal	149	4	8	72.7	236.2
Serbie	94	11	23	7.6	6.9
Seychelles	104	9	38	8.3	0
Sierra Leone	156	7	17	56.2	0
Singapour	1	4	4	0.7	0
Slovaquie	36	6	16	3.3	30.4
Slovénie	54	5	19	0.1	46.8
Soudan	147	10	39	50.8	0
Sri Lanka	102	4	38	7.1	0
Suède	17	3	15	0.6	30.3
Suisse	21	6	20	2.1	27.6
Suriname	146	13	694	125.2	0.8
Swaziland	108	13	61	35.1	0.6
Syrie	137	8	17	18.2	4,353.80
Tadjikistan	159	13	49	27.6	216.8
Taïwan, Chine	61	8	42	4.1	177.4
Tanzanie	127	12	29	41.5	0
Tchad	175	19	75	175	365.1
Thaïlande	13	8	33	4.9	0
Timor-Leste	170	10	83	6.6	331.1
Togo	163	13	53	251.3	559.9
Tonga	43	4	25	9.6	0
Trinité-et-Tobago	80	9	43	0.9	0
Tunisie	73	10	11	7.9	0
Turquie	59	6	6	14.9	10.9
Ukraine	145	10	27	5.5	174.2
Uruguay	109	11	44	43.5	0
Vanuatu	60	8	39	54.8	0
Venezuela	174	16	141	26.8	0
Viet Nam	92	11	50	16.8	0
Yémen	98	7	13	93	0
Zambie	100	6	18	28.6	1.5
Zimbabwe	158	10	96	432.7	3.4

TURKEY

1. Informal Economy: Conceptual Framework

The informal economy[1] may be defined as economic transactions and activities which are hidden from public authorities for several reasons, such as to avoid the payment of taxes and social security contributions. Unreported activities are a prevalent characteristic of economic life, and assume substantial proportions even in the developed countries[2].

The growth of the informal economy is caused by many different factors. The most important ones are the rise of the burden of taxes and social security contributions; increased regulation in the official economy, especially of labour markets; forced reduction of weekly working time; earlier retirement; unemployment[3].

There are several methods of estimating the size of the shadow economy. They can be classified as direct and indirect approaches. Indirect approaches include "GNP Approach", "Tax Analysis Approach", "Employment" and "Monetarian Approach"[4].

2. Informal Economy and Competition Policy in Turkey

According to a study which calculates the level of informality in the economy in Turkey between the years 1971 and 2000, size of informal economy fluctuates in these years but from the 90's, it has started to grow[5]. In 2007, the level of shadow economy was predicted as 30 percent[6].

The causes of the informal economy in Turkey are several, such as financial, economic, political, social and legal. Within this framework, the economic system and structural properties have important role in shaping informal economy. Especially, the informal sector is most widespread in sectors in which small enterprises are active and which are labour intensive. Beside this, high inflation, economy politics, instability, crises and underdeveloped economies can be seen as the factors that affect the informal

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1 Informal economy can be discussed using various concepts, such as parallel economy, shadow economy, ghost economy, hidden economy or underground economy. In this paper, the term of "informal economy" will be mostly used.

2 Globalising Tax Evasion: How Competition Affects the Size of the Underground Economy, Liliane Karlinge, May 16, 2008.

3 Shadow Economies: Size, Causes, and Consequences, F. SCHNEIDER and D. H. ENSTE, Journal of Economic Literature Vol. XXXVIII (March 2000) s.82.

4 http://www.tbb.org.tr/turkce/dergi/dergi41/Kayitdisi.doc "Türkiye'de Kayıt Dışı Ekonominin Boyutları, Nedenleri, Etkileri ve Alınması Gereken Tedbirler", Dr. Mustafa Ali SARILI, Bankacılık Dergisi, Sayı 41, 2002.

5 Çetintaş H. Ve H. Vergil, "Türkiye'de Kayıtdışı Ekonominin Tahmini", Doğuş Üniversitesi Dergisi 4 (1) 2003, s. 15-30.

6 http://www.atonet.org.tr/yeni/index.php?p=827&l=1

economy. High tax rates, the high cost of registered activities and over regulation are other elements which encourage shadow economy[7].

Informal economy exactly affects the market conditions. The official undertakings obey the rules and regulations while the underground producers do not. So the cost structures of these two groups of undertakings differ from each other. Informal undertakings have lower costs, because that they pay less for labour and input as a result of avoiding payroll taxes. Also, by disregarding safety and health standards underground producers gain a cost advantage. On the contrary, official firms are put at a competitive disadvantage, so that they have to choose between operating as informals or exit from the market. As a result of this problem, official firms may try to solve informality problem with anticompetitive conduct. For instance, they can be organised in the associations in order to avoid informality in the market by using anticompetitive measures. However, it is not the real and permanent solution for the market to use price-fixing agreements for fighting underground sector. In general, there has been a governmental body to prevent informality in the sector and make the market structure more competitive.

Another aspect of the informal economy is its importance in the calculation of market shares in the market. As it is mentioned in the definition, the transactions and activities of undertakings in the informal economy are not recorded. So it is hard to calculate the real values of the market size and each firm's share in the market. For example, if the level of informality in the market is 50 percent and the leader firm has a market share of 60 percent in records, then the real market share for the firm is 30 percent. This huge difference affects the competition law assessments, especially in merger control and abuse of dominant position cases. Because market share is essential in these two types of analyses and real market share is closely related with the level of informality in the market, informal economy is crucial in competition law enforcement. Many firms defend themselves claiming that they have relatively lower market shares due to existence of informal economy. For instance, they usually argue that they are not in a dominant position in the market because of the underground economy, if they are investigated for abuse of a dominant position. Additionally, merging firms also use informal economy tools for lowering their market shares in order to get permission from antitrust authorities.

3. Informal Sector in the Decisions of Turkish Competition Authority (TCA)

There are many cases that TCA faced the informal sector. Relevant cases are cited below where informal sector was discussed.

3.1. Waste Accumulator Case

In the Competition Board decision dated 20.5.2008 and numbered 08-34/456-161, it has been detected that at the stage of the collection of waste accumulators, some accumulator-producing and waste accumulator-collecting firms were engaged in competition-limiting behaviour. In the pleas of the undertakings, which took place in the decision in question;

the claims that

> *"…Even if it is thought for a moment that competition rules are broken, those injured by it are a few number of scrap dealers working in extremely unsound conditions in an informal way, or small firms or personal enterprises working with those scrap dealers, it is not possible to agree with speaking that here the rights of people working in an informal way have been infringed."*

[7] http://www.kayitdisiekonomi.com/files/VUSLAT-US1-KAYITDISI.pdf (Türkiye Ekonomi Kurumu Tartışma Metni)

took place. However, the statements that

> *"Primarily it should be emphasised that the purpose of the Act No. 4054 is to ensure the "protection of competition". Therefore, it is unnecessary to explain that in order for the Competition Board to make a detection that there is an infringement of competition in a market and to be able to establish a decision, a requirement such that large firms working in that market are injured does not exist. Moreover, consequences that decisions and acts detected to be an infringement give rise to in terms of many actors in the sector have been put forward above in detail."*

were included in the assessment of this plea, and it was put forward that competing undertakings' concluding agreements between themselves with a view to pushing out of the market those who commit informal activity did not rule out an infringement of competition. Furthermore, that competition-limiting agreements concluded can exceed their purpose in respect of their effect also takes place among the detections made. Because, it is understood that not only those firms working informally but also the other firms can be affected by an anti-competitive agreement. But, the decision in question does not render legal the activities of those working informally. All detections and assessments have been made in terms of "competition law". As a matter of fact, whilst assessing the pleas made by the undertakings that

> *"Licensed or unlicensed scrap dealers collected waste accumulators in an informal way, they were engaged in free-riding, they, by means of not filling the quotas of themselves and the other members of AKÜDER, caused them to be considered guilty vis-à-vis the Ministry of Environment and Forestry.";*

the statements that

> *"the addressee of the plea that scrap dealers working unlicensed collected waste accumulators in an informal way, they were engaged in free-riding, consequently they, by means of not filling the quotas of themselves and the other members of AKÜDER, caused them to be considered guilty vis-à-vis the Ministry of Environment and Forestry is not the Competition Board certainly. Public bodies to supervise and administratively penalise the sector in this regard are the Ministry of Finance and the Ministry of Environment and Forestry."*

were included, and emphasis was put on the fact that the other assessments outside competition law were required to be done by the relevant public agencies. In the result part of the decision given by the Board, the plea of the "prevention of informality" has not been assessed as a mitigating factor when establishing penalty about the undertakings concerned after having reached the conclusion that they infringed competition. In other words, in the decision in question, the "prevention of informality" has not been evaluated both at the stage of detecting infringement and when assessing penalty.

3.2. Denizli Precious Metal Dealers and Jewellers Chamber Case

In another Competition Board decision dated 19.9.2007 and numbered 07-73/892-336, it has been detected that Denizli Precious Metal Dealers and Jewellers Chamber infringed article 4 of the Act on the Protection of Competition No. 4054 by means of determining the selling and purchase price of gold outside the market. In the investigation referred to, the plea that

"……

- there was no commercial logic for sales below the cost,

- informality would be inevitable,
- it would give rise to products with a low degree of fineness and weight in gram, or to fake products,
- a consumer who preferred this product due to its cheapness would suffer, and
- this situation would contradict with the purpose of protecting the consumer, which was mentioned in the reasoning for the Act No. 4054."

has been made by the association of undertakings. In the assessment of this plea;

the statements that

> *"In its plea, the Chamber referred to article 11 of the Act No. 5362 and mentioned that it was commissioned for controlling the quality of goods and whether they are produced according to the standard. Primarily it should be mentioned that an assessment as to the quality control of the Chamber has not been made. There is no relationship between controlling the quality of goods, and price determination and controlling whether the price list is complied with. The control of the quality of goods should not be through price determination, but in the manner of having their degree of fineness controlled in houses for degree of fineness by means of getting specimens from jewellers. Furthermore, it is required that the provision of article 11 be assessed together with article 62 of the same Act. In article 62, it has been mentioned that price tariffs show maximum limits. Control to be made by chambers should be whether tradesmen and craftsmen sell above the price tariffs determined. But in the existing incident, sales made by a low price create discomfort and they are tried to be prevented."*

were included, and it was expressly mentioned that combating informality was not regarded in detecting an infringement of competition. Because, it was tried to be emphasised that controlling whether standards determined within the market are complied with was possible for behaviour other than those restricting competition and that a competitive market structure did not lead to informality.

3.3. Ceramic Coating Case

In the Competition Board decision dated 24.2.2004 and numbered 04-16/123-26 given as a result of an investigation conducted against undertakings operating in the markets for ceramic coating materials and/or ceramic health appliances, there are also statements as to informality. Among the evidence obtained from the undertakings in the process of investigation, statements that

> "expressed that…

- ceramic health appliances was a sector in the world where there was excess capacity,
- crises in the Far East and Russia created narrowing of demand,
- the European Union countries were saturated markets,
- in Turkey, investments continued despite these conditions,
- since export prices were low and dates of maturity were very high in internal markets, net prices amounted to export prices,
- increased capacities constantly pulled prices down due to narrowing of market,
- intense combat was required to be continued with those organisations which created unfair competition by working informally in order to be able to cope with these conditions,

- investment decisions were required to be taken by behaving with further common sense."

"closed the meeting by expressing that…

- there was a significant segment in the sector which grew by exploiting informal economy,
- this put in a difficult situation those organisations which survived in conformity to laws and according to the rules of economy,
- therefore, combating unfair competition was the most important subject of the Association,
- methods to protect members but to prevent unfair competition could be determined by ensuring the required reconciliation,
- a research that would put forward the consumption in Turkey overall and capacities of small producers would be very beneficial."

took place. However, convening, in the name of combating informality, of undertakings which committed competition-restricting acts has not been found sufficient at the stage of decision in detecting infringement or assessing penalty. Because, as is also expressed in the previous decisions, in combating informality, tolerating competition-infringing behaviour or exempting such acts from the practices of competition law is not in question. Just as there exist other public agencies that combat informality, it is possible to tell that the market would also push informal firms out of the market within the dynamics of itself.

3.4. TESK Case

Likewise, in the Competition Board decision numbered 7.1.2005 and dated 05-02/18-9, the investigation conducted in respect of the bread and pita market in Gaziantep has been concluded. In the decision in question, TESK which fixed a base price as to breads and pitas has made a plea that

> *"the demand in question has been examined by the Executive Board of the Confederation, and it is understood that offering for sale below cost those goods and services produced by our tradesmen and craftsmen arises out of reasons such as working and having work informally, and forming goods and services that are of low quality and that do not conform to conditions of health. It has been held to be appropriate that in price tariffs as to bread, prepared by our Chambers and approved by our Associations, the cost (base) price of bread as well as its maximum price be fixed and this price be also included in price tariffs since it would not only prevent suffering of the tradesmen and craftsmen concerned but also protect them from unfair competition. Therefore, provided that it is only limited to bread tariffs, also fixing the cost (base) price of bread besides the maximum selling price of bread and this fixed price's taking place in bread price tariffs have been found to be appropriate by our Confederation."*

As is seen, the confederation made up by tradesmen and craftsmen has detected a base price in the name of preventing informality in markets. It has been thought that thus it would be revealed that bakeries selling below the base price would produce and sell illegally or in a manner not conforming to standards. However, the plea in question has been replied by the statements that

> *"it is not possible to agree with the thought that the declaration of cost-base price is at least beneficial for drawing the attention of consumers, as TESK argues, even if it shall be calculated by taking into consideration the fulfilment of all legal obligations. It is defended in theory that, differently from the ceiling price, base price practices are far from ensuring a benefit in economic terms, such practices merely serve the aim of preventing predatory price war and of*

undertakings' gaining from it. Also indeed, particularly hypermarkets' selling at quite low prices the bread they produce at bakeries within them for purposes of drawing consumers to the point has become a typical quality of the market. Also in the letter of the Federation, dated 10.4.2002, emphasis has been put on this issue exactly. However, from both the Circular No. 29 and its correspondences with the Associations, it is understood that TESK is aware that cost-base price fixing cannot be applied to undertakings having the nature of merchant. Moreover, low-price sales of large stores do not remain limited to only bread and similar products, they create effect on markets of the other consumption goods as well to the degree of the ending of small-scale producers' activities. However, to what extent the determination of cost-base price would be an efficient solution is also controversial against the reality that capacities, costs and profit-related expectations of undertakings would present difference.

Relieving deficiencies in a market via determining a base price expressly sets contrariness to law in the context of article 4 of the Act No. 4054. Therefore, the opinion reached was that TESK infringed article 4 of the Act through its decisions directed at fixing and declaring the base price as well together with the ceiling price in bread price tariffs."

In other words, emphasis was put on the fact that the determination of a base price is not necessary in preventing informality in a market, and benefits that may be obtained by a consumer are prevented in this manner. On the other hand, in assessing penalty, the purpose of the association of undertakings to prevent informality has been considered as a mitigating factor as it would be understood from the statements that

"Also in the assessment of the fine to be imposed, market-related conditions explained above and associations of undertakings' acting with a view to correcting these conditions, and…

…are required to be accepted as mitigating factors."

3.5. Karbogaz Case

Likewise, in the Competition Board decision dated 23.08.2002 and numbered 02-49/634-257, it has been mentioned that Karboğaz Inc. which was identified to be in dominant position in the relevant product market detected as the "market for liquid carbondioxide" included in its plea the statements that

"It is asserted that the market share of Karboğaz Inc. is below the detected rates and is around 50 %. And particularly with the citation that informal economy is an important problem in our country, it is defended that this difference stems from the fact that sales of competing companies, which are realised without invoice are not reflected in the actual figures and therefore, the market share of competitors appears to be at lower levels than it is. It is mentioned that within this framework, the market position of Karboğaz Inc. appears stronger than it is, and it is implied that Karboğaz Inc. is not in dominant position in the market for liquid carbondioxide which is the relevant product market."

When assessing this plea, the statements that

"When making an assessment as to the fact that Karboğaz Inc. is in dominant position, there was not a limitation merely to the market share, the other factors outside the market share have also been considerably taken into consideration. On the other hand, not only today's but also 1996 and later-periods market share of Karboğaz Inc. have also been regarded. In determining the latest 5-year market share and the market position of Karboğaz Inc. within this framework, total sale figures have been asked from all companies (including Karboğaz Inc.) operating in the market, and also import figures obtained from the Undersecretariat of Foreign Trade have been

regarded. Furthermore, sale figures based on customers have been asked from all producing undertakings (Güney Natural Gas Inc., Barit Inc. and Habaş Inc.) including Karboğaz Inc. These sale figures obtained from the companies in question are also based on invoices charged by the companies." have been used.

As is seen, it is stressed that only the market share was not regarded when identifying dominant position. However, it is understood that the figures employed in the identification of market share are based on invoices. Because, it is not possible to use sales without invoice in the calculation of market share. For this reason, besides the fact that in markets where there is much informality, reaching actual market share information gets difficult, values to be used in calculation are required to exist within entries. However much it presents importance in identifying "dominant position" which is an important issue in respect of competition law, informality cannot be used in calculations of market share and market power since it is not possible to put forward its level definitely.

4. Conclusions and Recommendations

In summary, as it would be understood from the decisions included above, informality can be encountered in various ways in competition law practices. In general, when explaining a competition-restricting behaviour, it is likely that the "purpose of preventing informality" be used. Particularly, associations of undertakings' committing behaviour such as price fixing in the name of having a specific standard established and combating informality in their relevant market becomes the subject of investigations in our country. In these examinations, the "purpose of preventing informality" is not considered as a valid plea, it is likely for it to be deemed a mitigating factor in some files in terms of aim. Also, when identifying dominant position, it is likely that there are pleas as to the calculation of the market share of informal production. However, the inability to calculate informality due to its nature, and the utilisation of invoices that are "registered" in identifying market share do not justify the plea of "informality" of those undertakings which are identified to be in "dominant position".

UNITED STATES

The influence of the informal economy is not as prevalent in the United States as it is in some economies. While there are many reasons for this, one of the most significant is that the regulatory cost of doing business in most markets in the United States is sufficiently low that entrepreneurs do not feel a need to retreat to the informal economy in order to avoid those costs[1]. The informal economy thus has a minimal impact on the antitrust agencies' direct enforcement responsibilities. The need to ensure that the regulatory cost of doing business remains at a level that encourages firms to remain within the formal economy suggests a critical role for competition advocacy to oppose overly burdensome regulations.

1. The Informal Economy and Enforcement

The United States antitrust agencies, the Department of Justice and the Federal Trade Commission, do not directly attempt to address the causes and effects of the informal economy. For example, the failure to pay taxes is addressed by the Internal Revenue Service and state and local taxing authorities, laws requiring the registration of businesses are enforced by the business registration authorities in the various states, counterfeiting of trademarks and patent infringement is subject to the imposition of legal remedies under the intellectual property regime, and relevant health and safety regulations are enforced by specialised regulators. To be sure, the failure of firms in the informal economy to abide by these rules can affect their role in the market, to the extent that firms that do not comply with these regulations likely incur fewer costs than firms that comply with regulatory requirements. Nonetheless, these problems are more effectively addressed by specialised regulators who have particular expertise and appropriate enforcement tools.

To some extent, the market can play a role in correcting competitive distortions created by the informal sector. In some sectors, consumers may perceive goods and services provided through the informal economy as being of uncertain quality and purchase them from informal sources only at a substantial discount. The FTC's consumer protection function includes a consumer education component which, among other things, provides information to consumers about doing business through the informal economy[2].

In cases in which informal market participants play a role in an antitrust market under investigation, the role of those market participants is taken into account just as formal participants are. Their market shares would be estimated according to the best available data and their ability to constrain an anticompetitive rise in prices or decrease in output would be considered. Consideration of their ability to constrain prices would, of course, need to take into account any limitations on their competitive

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1 According to the World Bank, it takes six days to form a business in the United States, as opposed to 64.5 days in the Latin America and the Caribbean region; 40 days to deal with construction permits as opposed to 271.1 days in sub-Saharan Africa; and 12 days to register real property, as opposed to 106 days in South Asia. World Bank, Doing Business Project, available at http://www.doingbusiness.org/.

2 In response to consumer harm caused, in part, by unregistered home repair contractors operating in the informal economy, for example, the Federal Trade Commission published "Facts for Consumers: Home Sweet Home Improvement" (August, 2001), available at http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro20.shtm.

significance that is caused by the informal nature of their market participation, the likelihood of market exit that might be caused by law enforcement efforts, and the extent to which price discrimination is feasible against an infra-marginal group of purchasers who insist on lawful products and who qualify as a distinct market.

For instance, the Department of Justice investigated the formation by the major record companies' of two joint ventures, pressplay and MusicNet, for the sale and distribution of digital music to consumers. Among the issues considered in the investigation was whether competing distributors of digital music over the Internet, including the informal unauthorised sharing of digital music among consumers, would limit the ability of the joint ventures and the parent record companies to exercise market power in recorded music in their Internet subscription services and in their positions in the distribution of music on physical media. Based in part on the well-publicised size of the informal sector in the music industry, the Department closed its investigation of the joint ventures without taking any action[3].

2. Removal of Incentives to Participate in the Informal Economy

Identifying the most appropriate role for a competition agency in addressing market distortions caused by the informal economy requires asking why firms operate in the shadows rather than as part of the formal economy. While there are many reasons, one documented cause is that burdensome regulation can make it difficult for entrepreneurs to enter the formal market and thus drive them underground[4]. As Hernando De Soto notes:

> "in Peru, for example, it takes a new entrepreneur thirteen years to overcome the legal and administrative hurdles required to build a retail market for food that would help take vendors off the street; twenty-one years to obtain authorisation to construct a legally titled building on wasteland; twenty-six months to get authorisation to operate a new bus route; and nearly a year, working six hours a day, to gain the legal license to operate a sewing machine for commercial purposes.
>
> In the face of such obstacles, new entrepreneurs hold their assets outside the law and therefore do not have access to the facilitative devices that a formal legal system should provide to help them organise and leverage resources. Because they have no secure property rights and cannot issue shares, they cannot capture investment. Because they have no patents or royalties, they cannot encourage or protect innovations. Because they do not have access to contracts and justice organised on a wide scale, they cannot develop long-term projects. Because they cannot legally burden their assets, they are unable to use their homes and businesses to guarantee credit."[5]

Submissions made by participants in this Global Forum echo this theme. According to Ukraine, "emergence and development of the informal (underground) economy is a reaction to excessive tax and regulatory pressure on the part of the state," and it takes 33 days and 115 Euro to start a business, a process that 70% of Ukrainian survey respondents described as difficult or very difficult. Mongolia tells us that among the reasons why herdsmen prefer to sell their livestock to the informal sector instead of to established processing plants is the many kinds of documents they are asked to provide by the latter.

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3 Press Release, U.S. Department of Justice, Dec. 23, 2003, available at http://www.usdoj.gov/atr/public/press_releases/2003/201946.htm.

4 William E. Kovacic, Designing and Implementing Competition and Consumer Protection Reforms in Transitional Economies: Perspectives from Mongolia, Nepal, Ukraine, and Zimbabwe, 44 DePaul L.Rev. 1197, 1206-08 (1994-95).

5 Hernando De Soto, The Other Path, The Economic Answer to Terrorism (2002) xviii-xix.

Even though the presence of the informal economy is not as significant in the United States today as it is in some other countries, its experience during the "Prohibition era" in the 1920s amply illustrates the potential for regulation to fuel the rise of a vigorous informal sector. In 1920, the 18th Amendment to the United States Constitution effectively prohibited the production, sale, importation, and export of alcoholic beverages. As a result, an entire industry was effectively replaced by an informal sector, much of which was dominated by organised crime. Tax revenue previously generated by the sector was lost to the government altogether. When Prohibition was repealed in 1933, most of the industry returned to the formal sector.

While regulation clearly has an important role in protecting consumers' health, safety, and well being, a valuable role that a competition agency can play is to encourage regulators and lawmakers to balance the costs and benefits of regulation. In the United States, through their competition advocacy functions, the DOJ and FTC assist in such balancing when the regulation in question appears to unduly harm competition. This function has a long history at both agencies[6] and was in "full swing" at the FTC since at least June 1980[7], which was around the time that the move to deregulate air and surface transportation was beginning to take hold. More broadly, the Office of Information and Regulatory Affairs in the Office of Management and Budget has responsibility for balancing costs and benefits of federal regulation generally[8]. Without an informed balance of costs and benefits, it can be difficult to understand the hidden effects of regulation and to recognise when those costs outweigh the desired benefits. Indeed, there are many cases where proponents of regulation assert some public benefit when the real purpose and effect of the proposed regulation is to restrict or eliminate competition.

Through its competition advocacy functions, a competition agency can bring great value by helping to illuminate the difference between the legitimate purposes of regulation and attempts to use regulation to hinder competition. Restrictive business regulation is typically promoted by those who have an economic stake in restricting entry into markets, normally vested incumbents.

More broadly, competition agencies may be among those within government who institutionally appreciate the importance of applying a cost-benefit analysis to regulation. They may thus be well-positioned to assist legislators and regulators to develop an approach to regulation informed by an understanding of how their actions can create or destroy incentives for entrepreneurs to participate in the formal economy. In some cases, the competition agency may be the only government institution with the expertise, interest, and resources to balance the costs and benefits of regulation and to advocate publicly for the removal of regulations that prevent entrepreneurs from entering the market.

As other participants in this Forum have pointed out, the informal sector is most prominent in sectors that require little capital, use primitive production and marketing methods and employ unskilled workers[9]. We examine sectors meeting these criteria in which we have engaged in competition advocacy aimed at explaining to regulators and legislators how burdensome regulation impedes entrepreneurs from entering markets.

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6 E.g., FTC Letter to The Honorable Dan Cronin, Illinois State Senate (1999), available at http://www.ftc.gov/be/v990005.shtm (liquor sales); DOJ/FTC joint letter to David B. Beach, Clerk of Court, Supreme Court of Virginia (1997), available at http://www.ftc.gov/be/v960015a.shtm (layperson preparation of real estate closing documents); FTC Letter to The Honorable Leonard R. Price, Minnesota State Senate (1995), available at http://www.ftc.gov/be/v950007.shtm (auto brokering).

7 James C. Cooper, Paul A. Pautler, Todd J. Zywicki, Theory and Practice of Competition Advocacy At The FTC, 72 Antitrust L.J. 1091, 1094-95 (2005).

8 See http://www.whitehouse.gov/omb/inforeg/regpol.html.

9 Submission of Jordan, ¶24.

While these interventions were aimed at increasing competition and were not specifically aimed at moving entrepreneurs from the informal sector to the formal one, the effect may have been the same.

2.1. Taxis

In the United States, taxi services are regulated at the state or local level. Although the details of regulation vary from place to place, most major cities continue to regulate entry and fares in some manner, most also regulate the types of service that can be provided (e.g., minimum number of cabs per company or association, 24/7 coverage of telephone requests, shared riding, conditions for service refusals, definitions of service areas, required dispatch capability, required taximeters), vehicle and driver characteristics (e.g., cab age and design, signs, no criminal background, knowledge of the city streets and landmarks, record keeping, neatness, facility with the English language, and sensitivity training), and service quality (e.g., cab cleanliness, maximum response times). In addition, jurisdictions often regulate the maximum hours of service per driver per day, license transferability, safety inspection frequency, and insurance and bond requirements[10]. In some cities, particularly around airports, a significant unlicensed sector operates outside of the formal economy.

From the time that most cities in the United State adopted entry restrictions in the 1930s, a time when many U.S. industries sought governmental protection from competition, a handful of experiments with taxicab deregulation have provided important evidence on the relationship between regulation and market entry. The involvement of the Federal Trade Commission in this sector has focused primarily on efforts to assist deregulation in the industry, through reports and advocacy efforts, including 19 filings with various local authorities from 1984 through the present[11]. The FTC's advocacy efforts were largely based on a staff report on taxicab regulation[12].

Among other things, reviews of the effects of deregulation experiences in the United States indicate that the number of cabs and cab companies rises and, therefore, employment opportunities and the number of cab hours of service rise and that the bulk of the new entrants are individual drivers who serve taxi-stand markets that do not require radio-dispatch capability. Entry restraints were not shown to have any appreciable benefit to consumers[13]. While the reviews did not address the extent to which deregulation reduced the number of unlicensed cabs on the street, it is fair to infer that many of the newly licensed taxis may have come from the ranks of unlicensed drivers.

2.2. Trucking

Trucking is an industry that is highly susceptible to participation by the informal economy. Entry into the trucking business requires only a truck and a telephone, and may be paid for in cash. Thirty years ago, interstate trucking was heavily regulated at the federal level, with new entry restricted and specific routes subject to approval. Deregulation of the industry began in 1980. Today little economic regulation of

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10 The U.S. experience in the taxi market is described in more detail in a 2007 United States submission to Working Party 2, available at http://www.ftc.gov/bc/international/docs/ustaxis.pdf.

11 E.g., Letter from Maureen K. Ohlhausen, Director, Office of Policy Planning; David P. Wales, Acting Director, Bureau of Competition; and Michael R. Baye, Director, Bureau of Economics, to The Honorable G. Harris Adams, Colorado Public Utilities Commission, November 3, 2008, available at http://www.ftc.gov/os/2008/11/V090000cotaxis.pdf.

12 Frankena, M. W. and P. A. Pautler, An Economic Analysis of Taxicab Regulation, Bureau of Economics, Federal Trade Commission (1984), available at: http://www.ftc.gov/be/econrpt/233832.pdf.

13 The need for targeted regulatory intervention may continue to exist at airports and taxi stands, based on the particular characteristics of that part of the market.

interstate trucking remains, although regulation of intrastate trucking at the state level persisted for years afterwards. Entry is no longer restricted and barriers to entry are low.

The FTC and DOJ were active proponents of trucking deregulation, and sought to advocate competition in the sector by explaining the costs that trucking regulation imposed on consumers and the benefits of competition. The Federal Trade Commission (FTC) alone made at least 17 such submissions, principally directed to state governments that retained the power to regulate intrastate trucking even after interstate regulation ended at the Federal level[14]. In a submission to the Railroad Commission of Texas, for example, the FTC presented evidence that shipping of a common consumer product that cost $2.52 per mile between two key cities in Texas' regulated market cost only $1.46 per mile for a similar distance in the unregulated interstate market. It also cited the positive effects of deregulation in states that had deregulated: lower prices, continued service to small communities, and undiminished service[15].

A 1988 FTC study is especially instructive because it closely examined and addressed the arguments advanced by proponents of trucking regulation. Opponents of trucking deregulation have made four main predictions about the effects of partial deregulation: that service to small communities will be reduced, that "destructive competition" will ultimately harm consumers, that confusion and inefficiency will be created, and that highway safety will deteriorate. None of these predictions was supported by the evidence.

According to the 1988 FTC study, federal and state regulation of trucking drove prices up and encouraged inefficient practices. Among other things, it found that employment in the trucking industry has risen sharply since deregulation. In 1980, 1.48 million people were employed in trucking services. By 1987 that number had risen 29.2% to 1.8 million[16]. Regardless of whether these new entrants came from expansion or by bringing truckers from the informal to the formal sectors, deregulation reduced incentives for truckers to operate in the shadows[17].

3. Conclusion

The United States' experience has shown that removal of burdensome regulation can open the way to new entry into a variety of sectors of the economy and help to eliminate disincentives from participating in the formal economy[18].

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14 E.g., Comment of the Staff of the Bureau of Economics to the South Carolina Legislative Audit Commission (1994), available at http://www.ftc.gov/be/healthcare/docs/V940003%20SC%20Trucking%20Regulation.PDF.

15 Letter from Thomas Carter, Regional Director, Federal Trade Commission, to Raymond Bennett, Director, Transportation/Gas Utilities Division, Railroad Commission of Texas, October 2, 1989

16 Diane S. Owen, Federal Trade Commission, Bureau of Economics, Deregulation in the Trucking Industry (1988) (citing Nancy L. Rose, Labor Rent Sharing and Regulation: Evidence from the Trucking Industry, 95 Journal of Political Economy 1146-78 (1987)).

17 When trucking was deregulated in the 1980s, it was expected that private carriage – trucking service that was performed in-house by firms that were not regulated by the Interstate Commerce Commission but was inefficient because firms could carry only their own goods and thus had many empty return trips – would be replaced by for-hire service as prices declined. In fact private trucking has not lost a significant market share, and some transportation experts attribute this to private carriers entering the formal for-hire market.

18 It would go too far to suggest that the underground economy does not exist in the United States. Even after the repeal of prohibition, a significant traffic in illegal alcohol persisted, especially in mountainous southern regions, in response to the pervasive state regulation that replaced prohibition. Passengers arriving in American airports are familiar with promoters of unlicensed taxis that frequent the arrivals areas.

The United States' experience also highlights how a competition agency can help legislators and regulators to understand the importance of balancing the costs – including the possible expansion of the informal sector -- against the benefits of regulation. The fact that some regulations serve only to advance the economic interests of their proponents does not mean that others do not serve a legitimate purpose. The state does have a legitimate interest in ensuring the safe operation of trucks, and ensuring that taxis are safe and readily available. Due consideration must be given to the legitimate ends of regulation, while putting them into context and balancing them against how they impact entry.

BULGARIA

1. The Informal Economy in Bulgaria

The grey economy is one of the main constraints to investment and growth in Bulgaria. Lower tax and social security rates and increased control intensity introduced by the Bulgarian government since 2003 and continued credit and FDI-based economic growth have reduced the share of the grey economy by some 30% between 2002 and 2008.

The grey economy has emerged as a top concern to businesses operating in Bulgaria prompting an increasing number of proposed corrective policy actions on the side of the government, the business community, trade unions and think-tanks. Recent tax and social security contribution cuts and increased government control intensity have resulted in a de-shadowing of some parts of the grey economy.

2. Size and Scope of the Grey Economy in Bulgaria

Although grey economy is notoriously difficult to measure and understand it is easily identifiable by businesses when they face partners and competitors who operate outside the law by not paying taxes, social security and health contributions, hiding actual employment, circumventing product quality, safety or environment regulations, infringing copyrights, etc. According to the latest Enterprise Survey of Bulgarian firms performed by the World Bank in 2007 **informal practices** have topped the list of constraints to firm investment in Bulgaria.

Notwithstanding differences in concepts and methodology, estimates of the size of the grey economy in Bulgaria since 1990 have ranged from 16% to 38% of GDP, which has consistently ranked the country among the "top" new EU member-states. According to different estimates the size of the grey economy in Bulgaria in 2007/2008 ranges between 20% and 35% of GDP, with some sectors, such as construction and real estate, reporting less than 50% of the actual value of transactions. While the National Statistical Institute imputes and adds part of the grey economy into national accounts and these numbers need to be interpreted with great caution when making conclusions about policy actions, they send a clear signal to policy makers that grey economy is a sizable challenge to Bulgaria's economic development. The most hardly hit sectors are the labour intensive construction, tourism, agriculture and services (e.g. repairs, private education and healthcare, etc.) but research has also shown that there are also considerable grey pockets in manufacturing, in particular in excise industries (alcohol and cigarette production and fuels), textiles and transport.

3. Dynamics of the grey economy

In response to business concerns and initiated policy action to reduce the level and scope of the grey economy in Bulgaria, the Center for the Study of Democracy and Vitosha Research constructed a ***Hidden Economy Index*** in 2002. The *index,* published annually since 2002, aims to track the dynamics of the hidden economy in Bulgaria. It is important to note that the *index* does not measure the size of the grey economy but its dynamics, giving important feedback to the policy makers and the business community on the effectiveness of measures to curb grey economy. According to the *index* there has been a rebound in the grey economy in Bulgaria in the first year of EU accession. This might reflect both reform fatigue on the side of the Bulgarian government following intensive efforts in 2006 to join the EU, but also the rising

concern of the business community in the country over unfair competition from the grey economy as international competitive pressure squeezes down its margins.

4. Measures to reduce the level of grey economy

Since 2003 the Bulgarian government has undertaken a number of economic incentive measures and increased control intensity to reduce the level of grey economy in the country, such as the sizable reduction in corporate and personal income taxes, as well as social security contributions, the integration and modernisation of tax collection under the National Revenue Agency, the introduction of compulsory labour contract registration, etc. These measures to improve the business environment compounded by sustained high economic growth have resulted in a gradual reduction in the share of grey economy in the country. According to CSD estimates based on the ***Informal Economy Index*** the hidden turnover of companies in Bulgaria decreased from 29% in 2002 to 17% in 2007.

5. Competition law enforcement

The Bulgarian Competition Law is applied to all undertakings and natural persons and consequently small firms operating within the informal economy do not remain outside the scope of competition enforcement.

6. Examples of CPC practice:

a) In 2005 the Commission approved the **sectoral analysis** of three related markets: **production of and trade in milling wheat, wheat flour and wheat bread for mass consumption**.

An inquiry into the bread sector revealed that the huge "grey economy" in the bread production and distribution market is the most frequently outlined problem by the market operators. Part of bread manufacturers, mainly small bakeries, produce and sell bread without having registered their firms and consequently have no obligations to the State budget and the insurance funds. They buy flour and grain without the proper documentation and invest no resources to improve working conditions. Their cost price is 20 – 30% lower than that of legitimate bread producers. The manufacturing process of illegitimate bakeries is done in poor sanitary conditions and through under-reporting of income. These firms undercut product costs which hinders sector development and creates market chaos.

A conclusion was made that the "grey economy" in the sectors for production and trade in wheat flour and wheat bread for mass consumption stemmed from the VAT-free trade in wheat and that the relatively strong "grey" economy in the sector generated unfair competition.

As a result of the initiated inquiry, the CPC came out with some recommendations:

- A suggestion to develop, with the help of branch organisations, an effective control system to fight unfair competition in the sector. The aim was to restrict the informal economy by prohibiting grain trade without the proper documentation resulting in under-reporting of turnover, tax and insurance evasion, and harm to the State budget.

- The CPC advised the State to introduce mandatory registration under the VAT law of all flour producers. The objective was to place market participants in an equal position and "de-shadow" illegitimate producers.

- The CPC advised market participants to diminish the silent or explicit prevention, restriction or distortion of competition on the relevant market, namely the unfair attraction of customers by selling flour at prices below the actual production and realisation costs, as well as the direct or indirect fixation of prices and allocation of markets and supply sources.

- The CPC called for joining the efforts of State bodies and branch organisation to enforce the rules of fair business and market behaviour.

b) In 2008 the Commission on Protection of Competition approved the concentration between Holsim Bulgaria AD and Remos Beton OOD. The assessment of the **concentration in the market of ready-mixed concrete** suggested evaluating the size of the market. The Commission had reasonable grounds to believe that part of the production of concrete is made without the necessary documentation at lower prices or without regular and accurate accounting. The existence of "grey sector" was indicated by the Association of producers of concrete in Bulgaria as well as by independent producers.

   The lack of official statistics on regional markets in the concrete production and the existence of unregistered transactions raised serious doubt about the accuracy of the assessment based on individual reports from participants in the market, since there is no certainty about the market players and the completeness of the accounting documents. All this called for an alternative indirect assessment through tracking shipments of materials for concrete production, namely cement and inert materials.

   The indirect assessment of the regional market of ready-mixed concrete, on the basis of consumption of inert materials, is not sufficiently accurate due to the existence of grey sector in the delivery of inert materials: many companies produce inert materials without authorisation and sell them at low prices without documents. The statistical reporting of transactions is seriously hindered by the presence of unregistered sales, illicit mining and the related difficulties in actual control of the yields available on municipal concessions.

   Regarding the assessment of the regional market volume of concrete, based on the consumption of cement as the main ingredient used in concrete production, information on sales of the national producers of cement to the concrete producers in the region provided relatively detailed information on the total consumption of cement in concrete production in the region. At the same time, additional information from national statistics on the imports of grey cement in the country can not refer to consumption in a given geographical area, but should be viewed as an indication that the designated market volumes may be higher.

c) In 2007, the Commission on Protection of Competition reviewed a proposal made by the taxi associations to the Ministry of Transport for the introduction of minimum uniform tariff of the taxi service, determined through a coordination of the legitimate branch representatives and the local authorities, valid for the territory of each municipality.

   The CPC opposed to any form of fare regulation. Nevertheless the Commission proposed measures to decrease the informal economy in the sector. The CPC reckons that the municipal councils should exercise their powers envisaged in the Law for the road transport to determine the number of the taxi automobiles, working on the territory of the municipality, as well as the conditions and the order for their distribution between the carriers. Although this restricts the entry in the market, at the moment this is the most suitable way for balancing the interests of the consumers and of the carriers. These powers should be exercised after consultations with the taxi associations. The entering of new participants in the market without any control is connected

with risk of disregarding technical requirements. The determination of the number of taxis should go together with enhanced control with regard to the requirements and severe sanctions in cases of infringements. The number of the taxis should be reviewed every year on the basis of the changes in circumstances and the needs of the population. Thus there will not be market foreclosure for a long period and the potential competition will continue to play its disciplining role.

CHILE

1. The concept of 'informal sector'

The expression "informal sector" – or sometimes 'informal economy' - has no single meaning in the economic and social theory. One of its fields of application is the labour market, where it identifies people working in an unofficial way, i.e. under no contract, hence not covered by the social security system or by an established social protection net. This first meaning, along with some precisions needed for a formal definition, is the one used by the United Nations International Labour Organisation (ILO)[1]. But this is not the connotation important to us in what follows.

The expression also stands for agents and businesses operating outside the legal and regulatory framework – such as, for instance, health care, property rights or the tax system. It can readily be seen that this concept can depict as many informal markets as there are agents and businesses in an economy. In other words, an informal sector can be observed in each economic activity and sector, although informality is predominant is some of these, as is the case of small and medium enterprises.

Formally, ILO has set up a conceptual framework for defining informal economy. This definition, adopted by the United Nations Organisation in its National Accounts System (1993), blends together both ranges – business and employment – of the informal economy.

2. The informal sector's economic impact

According to the literature, Latin American countries exhibit a large incidence of the informal sector, which contributes to a high rate of black labour (informal employment) and to a low rate of tax compliance. Estimates for the Argentinean economy in 2004, for example, show the relative tax charge in its formal and informal sectors: "According to the Foundation for Latin American Research, the firms that pay their taxes on time and register their employees have a tax incidence of 37.3% of GDP, more than twice the informal sector's, all of which clearly bears negatively on the former's competitiveness. In some cases this can be deemed as unfair competition, able to push formal firms out of the market."

Tax considerations are far from being the sole concern caused by the informal sector, since local trade is also harmed. In order to increase and improve to informal sector's regulation, in 2007 the government sponsored a bill[2] on the grounds that "illegal trade is a serious national problem as long as it generates assorted costs and social damage. On the one hand, mention must be made of tax evasion. Besides, in many cases that illicit activity breaks the law of intellectual property thus affecting the claimants of involved rights, along with perverting the copyright system. Third, there is the distortion introduced in the

1 ILO introduced the concept of 'informal sector' for the first time in the early 70s, not without controversy, grounded on the complexity, dynamism and diversity of informal activities around the world. Only in 1993 ILO produced a statistically harmonised definition, based on the characteristics of activities and businesses related to the sector. Later on, in 2002, ILO acknowledged that workers and informal activities are not concentrated in one sector (or economic activity) alone, changing the concept to a wider one, from 'informal sector' to 'informal economy'.

2 Senate's Bulletin N° 5069-03

illegal trade's product market, which translates into unfair competition to legitimate businesses. In the tax, sanitary, criminal, and copyright laws, and also in the municipal environment, measures have been taken to fight illegal trade and its harmful effects, to no avail. Defences adopted so far with the purpose of weakening illegal trade have consisted mainly in sanctioning the retailer, that is, they aim at the final link in the productive chain and hence do not reach producers, managers or supervisors of the organisations behind this illicit activity. This bill intends… to prosecute the organisations and associations devoted to illegal trade, as a way of hindering its origins".

3. The informal sector in Chile

The regular measurement of said sector in Chile is made by the National Statistics Institute, which measures levels and rates of monthly employment and unemployment in the country. The source of its figures is the National Employment Survey, in application since 1986. According to it, the local informal sector accounts for nearly 40% of total employment.

A further estimation of the informal economy's size and characteristics was developed by Sánchez and Labbé[3], following the ILO methodology and the CASEN[4] survey for 2002. The researchers credited the informal sector with a 46% share, whereas ILO's data pointed at a 36% share. Finally, a World Bank's document for 2003 reported that the Chilean informal economy represented a 20% share of GNP, far below the regional average (41%).

All these figures betray the fact that the informal economy has not been thoroughly examined in Chile so far. Considering this issue's importance, the Ministry of Economic Affairs is setting up a research to assess and estimate the informal economy incidence and evolution, based on a household panel data. The outcome from the first instrument is expected for April 2009.

4. The Informal Sector and Competition Policy

The Chilean Competition Law's[5] target is "to promote and defend free competition in markets". In subsequent articles it states that "the anticompetitive illicit are any deed, act or contract that prevents, restrict or obstruct free competition, or that tends to produce these effects" in a wide sense. The following literals illustrate anticompetitive behaviour, like collusive agreements and abuses of dominant position. The Chilean statute does not consider anticompetitive conducts per se, but analyses the transgression by means of the rule of reason. In this sense the case analysis always includes the definition of the relevant market and the identification of a market power used or obtained in a wrongful way, or –-in forward-looking rulings-, whose acquisition generates significant risks of abuses or of coordination in the future market scenario.

Due to all this, in Chile the relation between the informal economy and the competition policy is not necessarily clear and straightforward, mainly because the informal economy and informal activities seldom

3 Sánchez, Marlene and Javier Labbé (2004), "The informal sector in Chile: A statistical vision", Ciencia y Trabajo, year 6, N° 14, October.

4 National Socio-Economic Characterisation Survey (CASEN), used to diagnose and assess the impact of government programmes on households. This survey is carried out by Chile's Planning Ministry.

5 DL 211 / 1973 and its amendments, summarised in the DL 1/ 2005 of the Ministry of Economics Affairs.

have a market share large enough to result in a dominant position[6]. This is all the more true since 2007, when the Unfair Competition Law was enacted[7].

Despite this market power concern, a review of the competition authorities' rulings leads to identify two main issues between the informal economy and competition policy:

- an informal activity harms formal competitors directly by means of unfair practices; and
- informal agents are considered as economic agents, and included in the definition of the relevant market

The following cases are empirical examples of both situations:

a) Travel agency case (2000)[8]

Koriana Travel was accused by the FNE of selling air tickets with a substantial discount, allegedly financed by tax evasion. The Commission regarded this conduct as unfair competition and punished the defendant with a fine.

b) Chiletabacos - A cigarette distribution case (2005)

In this case, concerning the cigarette distribution market, Philip Morris (subsidiary of the Altria Group) accused Chiletabacos (the dominant firm in Chile with more than a 90% market participation and a subsidiary of British American Tobacco) of abusing its dominant position through a series of vertical restraints, such as dealing and exclusivity contracts.

According to Chiletabacos, the 'black market cigarette sales' added up to around 7% or 8% of its market. The Competition Court dismissed the black market figure as an argument for diminishing Chiletabacos' market power. This is the sole case in Chile in which the informal economy has been seen as outlining the relevant market in a competition case.

6 This framework led to the early dismissal of a number of cases where no background for defining markets or evidence of market power was available.

7 Law N° 20.169 / 2007.

8 Ruling n° 568 / 2000

COLOMBIA

1. Definition of the informal economy

"The term "informal sector" was first coined by a British economist, Keith Hart, in a study of economic activities in urban Ghana (Hart, 973). Today, the concept of an "informal sector" seems to be replaced by "informal economy", which includes all economic activities by workers and economic units that are—in law or in practice—not covered or insufficiently covered by formal arrangements, directing both enterprise and work relationships"[1].

Several authors have developed the study of informal economies around the world for developing countries. The usual sense given to the term is brought from the Anglo-Saxon current (United States and Occidental Europe), which describes the informal as the group of economic activities that are carried out lawfully inside a market, but the resultant transactions are not counted in the national statistics and accounts, due to the fact that such activities escape from the formal registration, with the purpose of evading the control of the State either partially or totally. This definition does not include illegal undesirable activities and productive activities destined to self consumption. In order to make our contribution, this is the meaning that we choose for the figure exposed, in application to the Colombian economy and the effects generated in the market.

2. Causes, characteristics and size

The informal economies are generally associated with developing countries, which is the case of Latin American nations, but is not strange to developed countries either. For the first scenario, developing countries, one of the predominant factors for informality is unemployment in the formal sector, accompanied by other ones such as tax and law evasion.

There is a large range of causes for the increasing extension of the informal economies pointed in the study of this topic, however, we would like to aim some of them because of their significance towards this analysis in developing economies such as the Colombian one.

The migration of population from the country to the urban centres is one of the fundamental origins of informality. As known, the migration produced internally in a State, entails to disproportionate growth of the cities, as well as marginalised stratums and unemployment because of the impossibility to absorb the increasing offer of able work force. When these factors are congregated in the major cities, the unoccupied population might decide to produce or commercialise products and services informally, as said in the definition proposed, this production or commercialisation and the resultant products and render services are legal, but the transactions generated in the process flee out of registration, which ends up in evading a serious number of requirements, such as proper accounts and books, taxes, labour law, social security law among other serious effects.

[1] LARSSON Allan. "Empowerment of the Poor in Informal Employment". Commission on Legal Empowerment of the Poor. January 2006. Pg. 1.

On the other hand, even though at the beginnings the notion of informal economy was placed in a marginal place, not linked to the formal sector, and expected to disappear when the nations achieved sufficient levels of economic growth and industrial development, now a days is clear that the informality can not be longer considered as a temporal event. From this point, the theory of the economic cycle has been applied by some authors, exposing that it constitutes another visible cause for this phenomenon. In general terms, the exposed hypothesis establishes that the successive stages that develop the formal economy influence the informal economy. In this sense, when the formal sector is in crisis, the informal one experiments an increment and vice versa. As seen, the relation between the two economies would be indirectly proportional. "Furthermore, the informal economy has been observed to have more of a fixed character in countries where incomes and assets are not equitably distributed. It seems that if economic growth is not accompanied by improvements in employment levels and income distribution, the informal economy does not shrink. The situation is, therefore, that the informal economy is continuously increasing in most developing countries, even in rural areas. In all developing countries, self-employment comprises a greater share of informal employment than wage employment[2].

In Colombia the informal economy is subdivided depending on the activity, product or service which is developed. For instance, we can discern informality in commerce, industry or services.

In commerce, informality is mostly observed in street vendors, an activity which is practiced commonly along Latin American cities from which Colombian cities are not excluded. All kind of products are commercialised, perhaps the only requirement is that they are easily transportable because of the conditions of the business.

Informal industry, in the other hand, is mainly underground in comparison to informal commerce, which is generally visible. "*There are two kinds of informal industrialists in Latin America, one is the formal industrialist who informalises part of his production as a result of the high cost of regulation or taxes. Even though he may conceal part of his production, he belongs to the community of established industrialists. In many cases the high cost of legality in Latin America has forced him to move part of his production to the informal sector*." For the Colombian case the informality is present on both manners mentioned above.

Regarding services, the usual example in developing countries is public transportation, activity that goes hand in hand with the fact that the government is unable to cover all the needs in this field. In our country, public transportation prices are regulated by the administration, so that the offer from the transporters whom escape from regulation normally consists in charging less for the same service.

The last official statistic analysis concerning informal economies covered the thirteen (13) principal Colombian cities during years 2001 – 2006 from April to June, and was prepared by the Administrative National Statistic Department (*Departamento Administrativo Nacional de Estadística* – DANE). This Department includes for the given study, domestic and independent workers, excluding professionals or technicians.

It can be said that in Colombia an important percentage of the labour occupation is informal. In the 90´s, the informal occupation inside the major cities was ranged close to the 54 %, from the year 1996 and ahead, this proportion rose constantly until year 2001, when the percentage is pointed in 61%. From 2001 to 2003, this participation decreased in 7 points. The last statistic revealed in 2006, showed that in the thirteen principal cities in the country the informal employment achieves the 58.5 % of the labour occupation. The statistics reveal an indirectly proportional relation between the increasing of formal work

[2] BECKER Flodman Kristina. "The Informal Economy". International Finance Corporation. World Bank Group. http://rru.worldbank.org/Documents/PapersLinks/Sida.pdf. March 2004.

and decreasing of informal jobs, as well as frames that a 14% contributes to social security, while 76% have health insurance both paid and subsidised[3].

The Gross Domestic Product behaviour is one of the most relevant sources of the fluctuation between formal and informal economies. Evidence points to the fact that in front of a sustainable, continued growth in the economy, a correlative reduction in the range of informality is shown.

However, lately a tendency has taken place in Colombian economy, constituting a paradox: meanwhile the economy is growing, unemployment increases or at least it does not decrease. This has been exposed by the Administrative National Statistic Department (Departamento Administrativo Nacional de Estadística – DANE) when comparing the increment in the Gross Domestic Product (GDP) with the raise in the unemployment rate[4].

An hypothesis might be deducted from the exposed above; even though formal economy is the principal and direct source of the GDP, informal economy income indirectly fortifies this indicator, beginning with the increase in consumption power from those that accrue working informally. This track shows how GDP increment does not necessary reflects in the decrement of unemployment and can, as suggested, grow in an opposite way: while unemployment in the formal economy rises, translating hand work to the informal sector, the last one expands and contributes to the GDP.

"Estimates have been made of the contribution of the informal sector (i.e. not the informal economy as whole, only informal enterprises) to the GDP. These estimates indicate that the contribution of informal enterprises to non-agricultural GDP is significant. The average share of the informal enterprise sector in non-agricultural official GDP varies from a low of 27% in Northern Africa to a high of 41% in Sub-Saharan Africa. The fact that such a large number of countries in Sub-Saharan Africa have such estimates reflects recognition of the importance of the informal sector in total GDP. The contribution of the informal sector to GDP is 29% for Latin America and 41% for Asia"[5].

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3 DEPARTAMENTO ADMINISTRATIVO NACIONAL DE ESTADÍSTICAS. Informalidad Laboral en las Trece Principales Áreas y Ciudades Colombianas, 2001 – 2003 (abril – junio).

4 SEGUIMIENTO Y EVALUACIÓN TRIMESTRAL DEL MERCADO LABORAL COLOMBIANO 2003 - 2006 Trimestre de 2007. Documentos Técnicos sobre Mercado Laboral. La paradoja del crecimiento económico sin empleo. http://www.dane.gov.co/index.php?option=com_content&task=category&sectionid=19&id=77&Itemid=259

5 BECKER Flodman Kristina. "The Informal Economy". International Finance Corporation. World Bank Group. http://rru.worldbank.org/Documents/PapersLinks/Sida.pdf . March 2004. Pg.19.

Table 5. Contribution of the informal sector to the GDP in selected developing countries

Country (year) Informal sector GDP as percentage (%) of non-agricultural GDP	
Northern Africa (2002)	27
Sub-Saharan Africa (2002)	41
Benin (1993)	43
Cameroon (1995–96)	42
Kenya (1999)	25
Mozambique (1994)	39
Tanzania (1991)	43
Latin America (2002)	29
Colombia (2002)	25
Colombia (2002)	25
Mexico (1998)	13
Peru (1979)	49
Asia (2002)	31
India (1990–91)	45
Indonesia (1998)	31
Philippines (1995)	17

Source: ILO, Women and men in the informal economy – a statistical picture 2002[6]

Towards the activity, the statistics show that the informality in Colombia concentrates in commerce and services, and in a minor level in industry. The first two (2) categories represent the 70% percent of the informal economy, mean while industry corresponds to the rest. In the industry, qualified work force and a minimum of capital are required, in opposition to the first classifications.

There are other indicators studied, such as the level of education. The population that integrates the informal sector is mostly composed by unskilled population. This participation, added to the population with primary degree education, conforms the 83% of the informal occupation.

2. Level playing field and productivity

As a characteristic of capitalist developing economies, the expansion in work demand does not come entailed to the same amount of work offer in the formal sector. In consequence, a huge part of the population is enforced to secure their living by producing o commercialising products or services in a small scale, with low resources, limited organisation and non entry barriers. The result of this scenery supposes insignificant productive levels, with absence of technique and accumulation, which means that both, the perspectives of real competition and the possibilities of saving, are minimum or non existent. In this frame, binding to law and all types of regulation represents enormous difficulties for this part of the

6 BECKER Flodman Kristina. "The Informal Economy". International Finance Corporation. World Bank Group. http://rru.worldbank.org/Documents/PapersLinks/Sida.pdf. March 2004. Pg.20.

population. Normally the population described dedicates to informal commerce and services rather than to informal industry.

Informal economy constitutes a problem for the population that is affected in their minimum rights, as well as for the government because the tax income is reduced parallel to the highly inversion that has to be made to minimise the damage due to the evasion mainly towards the defenceless workers.

In diverse sceneries, the International Labour Organization (ILO) has pronounce it self about informal labour, pointing that half of the world's workers do not earn enough to lift themselves and their families, noting an overlap of informality and poverty. "*The reality is that workers all over the world face degrees of informality, the most formal of which have multiple forms of protection, the least formal none at all*"[7]

For informal industry the scenery is different; it refers to a sector of the population that might have the capital and the knowledge to participate of the formal sector, but decides to exclude it self from the regulation in order to expand their income margin or to commercialise at lower prices in the way to increase a market share or to eliminate competitors. In this panorama must been included the firms that do make part of the formal sector but leave partially informal a section of their business.

Even though informal industry represents a lower proportion than commerce and services in the informal economy in Colombia, it constitutes an important obstacle to the economic development of the country. From the moment the tax evasion begins, the measure employed by the government is raising the tributes to the formal firms, in such way that the inequality between the transaction costs for these firms and the informal ones is unsustainable. Competition, as a result, grounds on the basis of disparity.

"The effect of the informal economy on productivity and economic growth is discussed in a recent McKinsey study. Companies around the world underreport employment, avoid certain taxes, ignore product quality and worker safety regulations, violate copyright and intellectual-property laws, or even fail to register as legal entities. The problem is particularly acute in developing countries, where companies that operate informally produce as much as 80 percent of the output in some industries. Few policy makers are concerned, but they should be. By avoiding taxes and regulatory obligations, informal companies gain a substantial cost advantage that allows them to stay in business despite their small scale and low productivity. This prevents more productive, formal companies from gaining market share. The result is slower economic growth and job creation"[8].

This lack of transparent competition affects the possibility of growth of the formal firms that, additionally, offer quality work conditions. The productivity of the country is also affected because generally the formal firms are more prolific than the informal ones, but the existence of the last ones reduce sells from the first ones, implying a raise in unused installed capacity and stock. However, is possible that informal firms become more productive, this as a result of the savings that constitute the serial evasion to law, regulation and taxes. Due to this situation, the margin might be invested in technology, which can promote efficiency. Even though, this outcome, as positive as can be seen, can't be promoted or encouraged; to achieve this condition many sacrifices are made along the way including, as said before, the minimum rights for the workers that belong to this class of market, as well as the common interest and the solidarity that characterises the purpose of the taxation, the public order when breaking the law and the equality between equals, when competing in profuse different conditions towards the firms that fulfil all the legal pertinent requirements.

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7 INTERNATIONAL LABOUR ORGANIZATION (ILO). Report "Economic Security for a Better World". ILO 2004b: 4

8 MCKINSEY Quarterl. "The Hidden Dangers of the Informal Economy". Commission on Legal Empowerment of the Poor. January 2006. Pg.3

4. Competition law enforcement

Small firms operating within informal economy are most certainly outside of the reach of the Colombian competition authority, or at least on a direct manner. A possible solution given by the competition authority would be through competition advocacy.

Market definition allows establishing the products that are part of a same market and between which competition appears, as well as those products that are substitutes. When a firm is part of the informal economy, it is not possible to take it into account to realise the market definition making it difficult to have a real market structure. Additionally, due to the possibility that informal firms tend to evade taxes and regulations, it is possible that they may sell products to prices under those given by formal competitors, in this way disabling formal firms to have major market participation and preventing the competition agency to have a suitable control of the competition in a certain market.

5. Advocacy

The importance of analysing informal economies has been subject of our attention. The Superintendency is aware of the global tendency to implement remedies on this area.

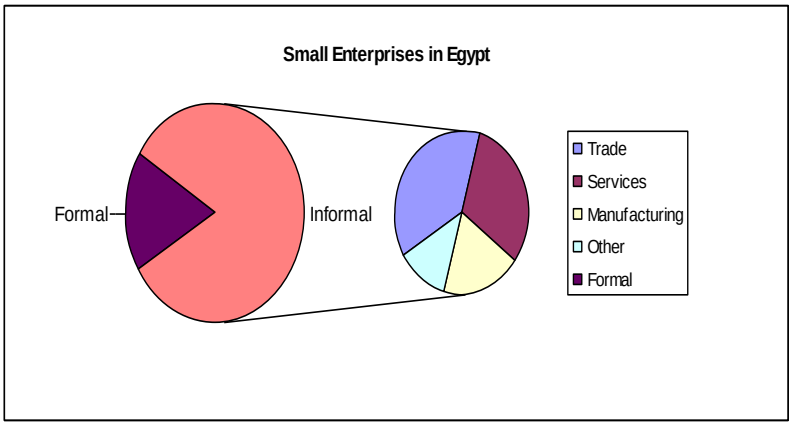
What the Superintendency may do being a technical organism created to inspect, control and supervise, is to advice the government regarding the importance of attending the needs of these phenomenon, fulfilling the need and the obligation of this agency to stress the importance of turning the economies into a formal scenario. These kinds of matters are a State policy issue in our country. The government should, through institutions structured with this kind of faculty, adopt the needed measures.

EGYPT[1]

1. Overview

For the sake of this report, informal sector in Egypt is defined as enterprises that lack any of the following three conditions: license, registration and regular bookkeeping.

The main characteristics of the informal sector in Egypt are [1]:



- The ratio of informal enterprises to total small private sector enterprises in Egypt is 82%. This percentage is the same as 1988!

- Respectively, Trade and Services account for 38.32% and 30.74% (total 69.06%) of the economic activities in the informal sector. Manufacturing, by contrast, accounts only for 19.04%.

- Compared to formal enterprises, informal enterprises are poorer in terms of capital, employ fewer workers, and have very limited access to formal finance.

2. Causes and Concerns on Competition

- *Government Regulations*: Egypt applies cumbersome business entry procedures; the World Bank [1] ranks Egypt as 114 (out of 181 economies). The lengthy and taxing steps of setting/running a business provide potential opportunities of corruption, hinder investment, and push small entrepreneurs into the informal economy. The effect on competition cases is the absence of potentially important data when identifying market structure or determining market power of companies. For example, the ECA is currently conducting a study on the edible oil sector in Egypt, where we estimate that the informal sector accounts for about 11% of the market, but we have no tangible access to the specific data of that sector. However, we do know for sure that practices in this sector are largely illegal and result in the production of inedible/carcinogenic types of oil. Thus, there is also a concern on the effects of informal sector on consumers' health.

- *Lack of entrepreneurship support*: Existing government's credit programs for small business seem ineffective. The main sources of finance remain predominantly through personal/spouse's savings (50%) and Inheritance (27.4%). Also these programs stop short from adequate training on business expansion, setting business plans, and prediction of market growth. The effect on

[1] The Egyptian Competition Authority (ECA)

competition is a stagnant informal sector, as indicated above. In other words, lost opportunities of new entrants that can compete more efficiently, improve products' quality or lower prices.

- *Cultural and Economic Factors*: Based on [4], Egyptians prefer to act as members of a life-long group or organisation, favour rules and structured circumstances, and accept/respect paternalistic/autocratic relationships to others based on where they are situated in formal and hierarchical positions. Also unemployment rate is about 9%, but it is highest among high educated sections (20%) than among illiterate or below intermediate (1%) [2]. This negative rate-of-return on education indicates migration of educated entrepreneurs to informal sector. Taking cultural consideration into account, these entrepreneurs would rather minimise future risks of their business by lowering their cost structures and avoiding registration with formal societal institutions. Also, they would keep their business small, funded by family and relatives and serving their local communities. The consequence on competition is, again, lost opportunities of growth which in turn could stimulate the market dynamics with new competitive entrants. Finally, the cultural dimension of "appreciating hierarchical relationship" poses a problem in acquiring qualitative data. In researching the Oil Sector in Egypt, we encountered claims of informal sector that buys frying oil from factories to later pack it and resell it for small restaurants or household consumption. Since the ECA is associated with the government it was quite difficult to verify these data from restaurant owners; the image and affiliation of the ECA was just too intimidating. To circumvent this obstacle, our investigators resorted to informal discussions with friends and those conversant with the subject. The "group" dimension of Egyptian culture, together with informal atmosphere, has paid off and the ECA could eventually acquire the needed information.

3. Methodologies and Recommendations

For qualitative data that cannot be reached through formal means, the ECA would consider alternative means of informal interviews and [seemingly] casual focus groups with relative stakeholders. For quantitative data, and economic analysis, the ECA usually adopts the information gathered from the formal sector as representative for the whole market. The justification here is that, as indicated by the discussion above, the informal sector in Egypt is fragmented, stagnant, and inefficient. Thus it poses no tangible threats on existing market powers or potential formal entrants. If anything, the informal sector represents a wasted opportunity for strengthening the competition in the Egyptian market.

In order to attract the informal sector into the mainstream business community, the ECA envisage a stronger role for the media, namely public education campaigns. The effect of such campaigns has already been felt in the Egyptian monetary sector. In 2005, Egypt has launched a nation-wide media campaign to increase public awareness of societal benefits of tax, change the attitude of tax evading persons towards the Egyptian Tax Authority. As a result, two million Egyptians filed taxes in 2005, doubling the corresponding number in 2004. Also, the tax revenue of 2006 has increased to 9% of the country's GDP, compared to 7% in 2005. Thus, much like individuals evading taxes, we believe that cost-minimising informal sector can be swayed to join civic institutions if provided with the proper awareness and long-term benefits of such an action, e.g. access to capital, sources of finance, and power to enforce contracts.

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ANNEX

DIFFICULTIES FACING THE EGYPTIAN COMPETITION AUTHORITY WHEN DEALING WITH THE INFORMAL SECTOR (MILK CASE)

- Lack of data/information about informal sector traders, producers and manufacturers, their relationship nature, cost structures, amounts of production, assets, distribution channels, and other needed information in order to conduct a milk market study.
- Difficulties in understanding the informal sector behaviour as the sector's knowledge about the market isn't at the same level of the registered formal farms, in terms of market structure, legal frame work, prices of inputs, necessary administrative facilities needed as well as essential hygienic requirements.
- The informal sector does not have the culture of cooperation due to the lack of trust in the government bodies. Some of the formal sector farms or companies do not have this cooperation spirit, regarding the informal sector; the situation is even worse.
- Difficulties of sector analysis, around 80% of the drinking milk market is informal. This figure is based on estimates of the formal sector and needs further assurance.
- The perception of the unfairness of the competition law, having the formal sector claiming unfairness "are you enforcing your power against us and leaving the informal sector deregulated?" They consider this as an unfair environment.

The benefits of turning informal sector into formal:

- being under veterinary supervision will result in good quality of feeding, therefore good quality of output (milk);
- having records about the number of firms, animals, will result in reliable figures and analysis;
- increase in supply of healthy milk and dairy products;
- increase in the supply of milk will increase the competition among the market players to the benefit of end consumers.

Some advantages of the informal sector:

- there are no entry/exit barriers to the market at any period of time; given a low cost of entry (one cow is sufficient), resulting a less concentrated market (millions of producers and thousands of manufacturers);
- create numerous jobs;
- low overhead expenses and transportation costs, i.e. they distribute their products in the surrounding neighbourhood. This enables most of the informal producers to distribute their products to a big number of customers at the lowest possible cost;
- lower prices of products that a large number of the Egyptian society favours over quality.

GABON

1. Definition

From a purely economic standpoint, the informal economy can be defined as all economic activities not subject to regulation and open to competition. These markets fall outside the scope of economic and social rules, as well as State intervention, and go untaxed.

The informal economy takes many forms, but the absence of "entry barriers" remains one of its leading features.

Administrative formalities and a heavy fiscal burden are the factors behind the expansion of the informal sector, which has developed to such an extent that it now competes with the formal sector.

2. Importance of the informal economy in the Gabonese economy as a whole

The informal economy is playing an increasingly major role and contributes substantially to the livelihood of a good share of the population in Gabon. This informal fabric of the economy covers a whole range of activities run by small craftspeople/traders, from Gabon and elsewhere in western and central African, offering goods and services at "reasonable" prices, to suit the obviously limited resources of their clientele.

The informal economy therefore comprises productive activities, family micro-businesses and individual initiatives.

The informal economy is largely dominated by commercial activities where the main players are economically independent.

In terms of competition, many small individual or family firms have emerged with the growth of the urban population, as opportunities arise.

At the same time, this expansion in the underground economy has awakened a singular taste for fraud among some of its shadier characters, particularly importers who fail to provide full invoices for the containerloads of goods they bring into the country without paying customs duties. This fraud is said to be highly detrimental to the inland revenue, but also to local producers because it gives rise to far more unfair competition than informal trade/crafts could ever do.

3. Competition in the informal sector

The opening up of the market and the entire economy to free competition has led to many informal economic activities, and the introduction of illegal business practices. The informal sector encompasses virtually every field of activity relating to commodities. Besides trade (wholesale and retail), the activities hardest hit by the scourge of the informal economy are "fruit and vegetables, apparel, services, crafts, passenger/freight transport and production, in particular forestry". The most common illegal practices in the informal sector includes "uninvoiced sales", "false invoices" and "hiring out business licences", as well as "fronting" which is common in the pharmacy sector.

4. Aplication of competition law to the informal economy

Faced with the surge in the informal sector now affecting the Gabonese economy, the government is having to come up with answers to a host of questions that remain of great concern to experts in structural adjustment planning. A central issues here is whether or not to adopt a laissez-faire attitude, to what, and to what extent.

Some pundits view the emergence of the informal sector as a healthy reaction by the "market" to the interventionism prevalent in African states.

They also see it as a real breeding-ground for small entrepreneurs who, thanks to the support they receive and to their competitive prices, will eventually make their way into the global economy.

The informal sector is therefore perceived to be a vehicle for economic development, and efforts should be made to ensure that its businesses become more "formal".

In short, the informal economy can be viewed as a necessary evil in developing countries like Gabon, provided there is an economic and institutional environment favourable to that sector so that it will increase its contribution to employment, production, human resource development and the social integration of those it employs.

- **Strategy No. 1**

  Adapt the legal and institutional framework to boost spontaneous development and promote free competition, as well as access to physical, financial, technical and educational resources on terms that are as beneficial to informal micro-businesses as they are to modern firms.

- **Strategy No. 2**

  Rigorously monitor the informal sector, which involves scheduling one-off inspections in sectors which are detrimental to both the formal sector and consumer health and which, by their very nature, distort free competition.

- **Strategy No. 3**

  Support for self-organisation, i.e. the gradual "incorporation" of the informal into the formal sector; this involves training for entrepreneurs in management techniques, competition and the market economy and is aimed at promoting access to the funding required to help enhance techiques and raise productivity.

GABON

1. Définition

Sur le plan purement économique, l'économie informelle se définit comme étant l'ensemble des activités économiques échappant à tout règlement et qui sont ouverts à la concurrence. Ces marchés échappent aux règles économiques et sociales et à l'intervention de l'Etat et ne font pas l'objet de prélèvement fiscal obligatoire.

L'économie informelle est multiforme, cependant, l'inexistence des « barrières à l'entrée » reste une de ses principales caractéristiques.

Le formalisme administratif et la forte pression fiscale sont à l'origine de l'expansion du secteur informel qui s'est développé au point de concurrencer le secteur formel.

2. L'importance de l'économie informelle dans l'économie gabonaise

Elle joue un rôle de plus en plus important et contribue de manière substantielle à la satisfaction des besoins quotidiens d'une bonne partie de la population gabonaise. Ce tissu informel de l'économie englobe une diversité de petits métiers exercés par des artisans ou petits commerçants gabonais mais aussi immigrés originaires de l'Afrique de l'Ouest et du Centre qui offrent des produits et des services à des prix « raisonnables » adaptés aux ressources par essence limitées de leur clientèle.

L'économie informelle est donc composée d'activités de production, de micro entreprises familiales et d'initiatives individuelles.

Le secteur de l'économie informelle est largement dominé par les activités commerciales dont le rôle principal est joué par les personnes économiquement indépendantes.

Sur le plan de la concurrence, on assiste à une éclosion de plusieurs petites entreprises individuelles ou familiales en rapport avec la croissance démographique dans les grandes villes et au gré des opportunités.

Parallèlement, la croissance de cette économie souterraine fait naitre chez ses acteurs les plus véreux un gout prononcé pour la fraude et notamment, chez les importateurs qui, en procédant à des sous facturations, font entrer par conteneurs entiers des marchandises sans payer de droits de douane. Cette fraude porterait un très lourd préjudice aux recettes de l'État, mais aussi aux producteurs locaux en les concurrençant déloyalement et bien plus fortement que ne pourrait le faire le secteur informel de l'artisanat et du commerce

3. L'état de la concurrence dans le secteur informel

L'ouverture du marché et de l'économie nationale au libre jeu de la concurrence a favorisé plusieurs activités économiques informelles ainsi que la mise en œuvre de pratiques commerciales illégales. Le secteur informel couvre pratiquement tous les domaines d'activités productives et de services marchands. Outre le commerce (gros et détail), les activités les plus touchées par le fléau de l'informel sont « le

secteur des fruits et légumes, l'habillement, les prestations de service, l'artisanat, le transport des voyageurs et des marchandises ainsi que les entreprises de production notamment dans l'exploitation forestière ». Parmi les pratiques illégales les plus courantes dans le secteur informel, on note « les ventes sans factures », « les fausses factures » et la « location des agréments du commerce », le phénomène de prête-noms est aussi monnaie courante dans le secteur des pharmacies.

4. L'application du droit de la concurrence à l'économie informelle

Actuellement, et devant la montée en puissance du secteur informel dans l'économie gabonaise les pouvoirs publics doivent apporter des réponses, à une kyrielle de questions qui restent des préoccupations majeures des experts des plans d'ajustements structurels. Au centre, la grande question du laisser-faire ou non, qui laisser-faire, dans quelle mesure.

Certaines têtes pensantes considèrent l'émergence du secteur informel comme une saine réaction du « marché » à l'égard de l'interventionnisme des Etats africains.

Ils y voient aussi une véritable « pépinière » de petits entrepreneurs qui, à condition d'être soutenus, pourront, grâce à leur prix compétitifs, prendre place dans l'économie internationale.

Le secteur informel est donc perçu comme un vecteur de développement économique, dont il faut s'employer à « formaliser » les activités.

En somme, le secteur informel peut être considéré comme un mal nécessaire dans les PVD, à l'instar du Gabon à condition toutefois , qu'il soit le gage de la promotion d'un environnement économique et institutionnel favorable au secteur informel afin d'accroître sa contribution à l'emploi, à la production et à la valorisation des ressources humaines, à l'intégration sociale de ses membres.

- **Première stratégie**

  Aménager le cadre juridique et institutionnel pour stimuler le développement spontané et favoriser le libre jeu de la concurrence ainsi que l'accès aux ressources matérielles, financières, techniques et éducatives dans des conditions aussi avantageuses pour les micros entreprises informelles que celles ouvertes aux entreprises modernes.

- **Deuxième stratégie**

  Contrôler rigoureusement, le secteur non structuré ce qui consisterait en la programmation des interventions ponctuelles dans les secteurs qui portent un préjudice tant au secteur structuré qu'à la santé et à la sécurité des consommateurs et qui sont de nature à fausser le libre jeu de la concurrence.

- **Troisième stratégie**

  L'appui à l'auto organisation : il s'agit d'une « incorporation » progressive du secteur informel au secteur formel, celle-ci passe par la formation des « entrepreneurs » aux techniques de gestion, à la concurrence, à l'économie de marché et vise à favoriser l'accès au crédit qui permettra d'améliorer les techniques et entraînera un gain de productivité.

JORDAN

By: Hetham Abu Karky[1]
Legal Researcher

1. Introduction

Economic is the study of what we do with the things we have in order to get the most of what we want.

The end economic activity is to satisfy the final consumer. The greatest economic system is the one that provides more goods and services at less cost. The consumer wants to get the best possible quality of products or services and pay the least possible prices.

Many people, perhaps most, do not notice or care whether the product is of formal or informal economy.

So the informal economy is there, and it always will be, everywhere. It is wider in some countries than other countries.

2. What the informal economy is

We will use the example of a wool weaver, who buys the wool from a well-known and registered shop, then weave the wool to make a pullover. He paid 5 JDs for the wool and sold the pullover for 15 JDs. So the 5 JD are part of the GNP, then it is part or the formal economy. But the 10 JDs are not part of the GNP, so they are part of the informal economy.

(GNP - Gross National Products - is the total value of all goods and services produced during a year.)

Therefore, all illegal transactions that create products and services , all imported products secretly and contrary to law without payment of legally required duties , smuggling , all these deeds and many similar are part of the informal economy .

3. Why there is an informal economy

Some or all of the following, cause the informal economy:

- Poverty: The condition of being poor makes some people approach any activity that help to earn money.
- Unemployment, especially if the unemployed are left without compensation or help.
- Greed for wealth, desire for possessing or having more than one needs.

[1] Complaints and Consultations Division, Competition Directorate, Ministry of Industry & Trade, Amman, Jordan

- Scarcity of goods, consumer demands, high prices, and inflation.
- High level of taxation.
- When the monopoly power is not controlled by law.
- When the competition laws are not in exercise.

4. Informal economy and Competition

We do not live in purely competitive economy. We will never be. We must assume a purely competitive situation in order to understand the important relationship between Supply, Demand, and the influence of these two forces on Price.

Adam Smith said: (If members of society are left alone to follow their own selfish interests, each person will be directed as if by an invisible hand to contribute toward the material. welfare of the commonweal in ways desired by society.)

Many prices are controlled by influences other than competition .Government controls some prices. Business men, manufacturers, whole sellers, and retailers, all control prices too.

The theory of pure competition is not presented as an accurate description of our economy, but as a major influence on it .There is no seller who does not face some kind of competition, either actual or potential.

In competitive society, there would be problems and conflicts. For example, demand rises for an expensive kind of cigarettes. If prices made these products profitable, the result is either more factories to produce these cigarettes or more smuggling.

Some members of the society would be getting what they wanted but the majority of members of society would probably not benefit from such an allocation of resources.

Then pure competition would hardly be described in such a case as operating for the good of' the wealth of the society.

There has never been a world in which pure competition controlled the production and sale of all products.

In every economy, in Jordan too, governments have been important in deciding the uses of resources. There have always been certain industries large enough to influences supply.

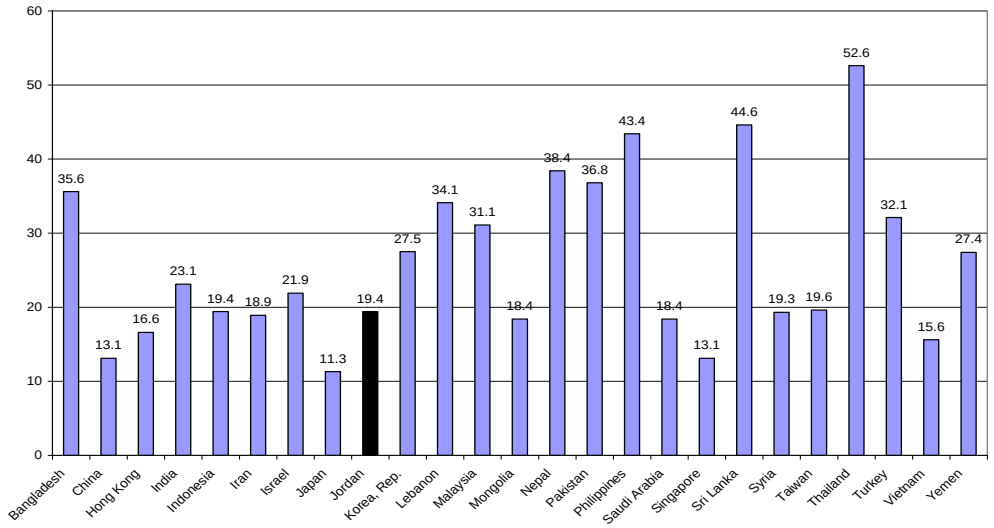
According to "Size and Measurement of the informal economy in 110 countries around the world" work paper by Friedrich Schneider[2], the informal economy percent in Jordan is around 19.4% of the Jordanian GNP.

[2] The paper was presented at a Workshop of Australian National Tax Centre, ANU, Canberra, Australia, July17, 2002.

Table 1: The size of the informal (and official) economy of 26 Asian countries

	ASIA	GNP at market prices (current US$, billion) 2000	Informal Economy in % of GNP 1999/2000	Informal Economy (current USD in bill.) 2000	Informal Economy GNP per capita	GNP per capita 2000, Atlas method (current US$)	Private consumption per capita 2000 (current US$)
1	Bangladesh	468.9	35.6	166.9	131.7	370	279
2	China	10652.8	13.1	1395.5	110.0	840	413
3	Hong Kong	1654.7	16.6	274.7	4302.7	25920	13902
4	India	4531.8	23.1	1046.8	104.0	450	294
5	Indonesia	1426.6	19.4	276.8	110.6	570	490
6	Iran	937.7	18.9	177.2	304.3	1610	760
7	Israel	1060.1	21.9	232.2	3659.5	16710	10458
8	Japan	49011.6	11.3	5538.3	4025.1	35620	19966
9	Jordan	83.1	19.4	16.1	331.7	1710	1377
10	Korea, Rep.	4550.2	27.5	1251.3	2450.3	8910	5540
11	Lebanon	174.2	34.1	59.4	1367.4	4010	3346
12	Malaysia	823.9	31.1	256.2	1051.2	3380	1642
13	Mongolia	9.5	18.4	1.8	71.8	390	268
14	Nepal	56.9	38.4	21.8	92.2	240	178
15	Pakistan	596.0	36.8	219.3	161.9	440	343
16	Philippines	793.2	43.4	344.2	451.4	1040	648
17	Saudi Arabia	1736.6	18.4	319.5	1330.3	723.	2747
18	Singapore	983.7	13.1	128.9	3240.9	24740	9176
19	Sri Lanka	160.0	44.6	71.4	379.1	850	610
20	Syria	159.6	19.3	30.8	181.4	940	718
21	Taiwan	3144.0	19.6	616.2	2720.5	13880	8695
22	Thailand	1205.4	52.6	634.1	1052.0	2000	1179
23	Turkey	2009.2	32.1	644.9	995.1	3100	2183
24	Vietnam	313.5	15.6	48.9	60.8	390	266
25	Yemen	73.9	27.4	20.2	101.4	370	282

Source: Friedrich Schneider calculations based on World Bank data, Washington D.C., 2002.



5. The Informal Economy Effects[3]

The informal economy has a negative effect on the economic growth; it also has some positive effects as well.

Positive effects:

- Reducing unemployment rate and poverty incidence through creating job opportunities.
- Employment in this sector is considered as a reserve for the formal sector during periods of economic recovery; store of excess employment during downturn.
- Supplying the formal sector with many necessary goods and services.
- Reducing the cost of living for the poor through providing goods and services at low prices.

Negative effects:

- The informal sector could be used as a venue for money laundering.
- This sector deprives the government from an important source of revenue because the activities in this sector are not taxed.
- The activities of this economy are not reflected in the GDP/GNP, which gives inaccurate estimation on the size of the economy and on the developments in the economy, including rates of economic growth.
- Unjust competition due to the fact that the good and services produced in the informal economy are exempted from all taxes and fees.

6. Government regulations

The governments encourages competition and protect it by means of antitrust legislation, on the other side of the coin the government is discouraging competition by such devices as tariffs, patents, fair trade laws and labour legislation.

Some time governments abolished enterprise and had taken over management of firms within action when they believe competition within an industry to be either impossible or contrary to the public interest.

As a result, when ever the government encourages competition, the informal economy decrease, and when discourages competition the informal economy increase.

The informal economy will be always the unknown part of the GNP, it is up to government and people to decrease it or increase it.

7. Competition and the informal economy in Jordan

The informal economy in Jordan affects the competition in the formal economy in specific industries.

[3] Labor Rights in Jordan, By Dr. Mohammad Shawabkeh , www.undp-jordan.org

The informal sector usually comprises individual activities and small enterprises which are subject to the regulations of labour, including agricultural activities, household activities, maintenance, transportation, real estate brokerage, peddler's activities, the activities of the family members who work collectively on various activities and they are not paid on regular basis as well as the small businesses which are not covered by the regulations of the Social Security Corporation. In most cases, the activities of this sector have small capital, use primitive production and marketing methods and employ unskilled workers. Therefore, we can assume that the competition could be effect in these sectors.

Sometimes we can notice that the formal firms and informal traders collaborate. Some formal firms use the informal traders to market goods their specially when it clause to expire date or when they are looking to effect other firms activities.

8. Competition Law Enforcement

There are several methods to be use to estimate the possible effect on competition from a merger in the formal economy when there is a concern about substitution by consumers to informal firms for example:

- Organise the formal sector to grant high quality of product by using a good raw material according to the national standards.
- Use machinery to save wages and time "product more cost less".
- Let the consumer realises that the quality slandered is very important and the unofficial products mostly not good even though it was cheaper than official products e.g. the informal product could not be covered by seller warranty.
- The competition authorities can contribute to solving the informality problem by lunched awareness campaign and exchange information with other authorities.
- Try to control the informal goods by cooperate with the interested authorities.
- Control markets and check the necessary licenses and permeations to practice economic activities.

KENYA[1]

1. Introduction

A 1972 landmark ILO study in Kenya confirmed the existence of this parallel economy dominated by small and micro businesses that absorb a large number of persons that would otherwise be recorded as unemployed by Economic Surveys. This sector that has been referred to as the informal sector to distinguish it from the modern sector is described as consisting of "... all small-scale activities that are normally semi-organised and unregulated, and use simple labour-intensive technology... undertaken by artisans, traders and operators in work-sites such as open yards, market stalls, undeveloped plots, residential houses and street pavements. They are not registered with the Registrar of Companies and may or may not have licenses from local authorities for carrying out a variety of businesses." The informal sector has been efficient at utilizing waste materials such as old tires, scrap metal, etc. to produce goods and provide services that otherwise would have been imported or would be too expensive for low income sectors.

These small businesses are often started by individuals with little capital and with virtually no support from the government or Non Governmental Organisations. A government report attributes the notable growth of the informal sector to "... ease of entry into and exit from the sector and little capital investment... absence of registration and other legal formalities, and gradual shift of labour from subsistence farming to informal sector as the economy increasingly becomes market oriented". Unemployment and underemployment is another particularly strong reason to go into self-employment in the informal sector.

While the government and the NGOs have been satisfied at the ability of the informal sector to absorb excess labour force in the country, there has been concern regarding how most of these enterprises stagnate at the bottom and do not show signs of growing into medium and large scale enterprises. Some of the difficulties that small and informal businesses face are associated with the country's legal structure; unavailability of capital to develop businesses, while others are related to the lack of appropriate business skills.

The concept of an informal economy, micro and small enterprises (MSEs) and Jua Kali[2] are often used interchangeably. The sector is a major source of employment and income as it accounts for 72% of total wage employment and 81% of private sector employment. Its' contribution is therefore greater than that of the medium and large manufacturing sector.

A majority of MSEs are micro-enterprises with fewer than 10 employees, while 70% of them are one person, own account workers. This infers that majority of MSE enterprises are operating at the bottom of

[1] The views expressed herein are those of Mr. Francis W. Kariuki, the Acting Commissioner/CEO of the Monopolies and Prices Commission of Kenya and Ms. Beldine Omolo, Head of Enforcement. They do not necessarily represent the position of the Commission.

[2] Jua Kali means hot sun. It depicts operations by informal businesses in the open, sometimes under the scorching sun.

the economy, with a significant percentage falling among the 53% of Kenyans living below the poverty line.

2. The Dairy sector: A case study of milk vendors

The informal dairy sector of Kenya is one of the most dynamic sectors in the economy, creating more jobs than the formal dairy sector. In cognisance of the above, new research has been conducted with the aim of demystifying the myth that milk sold through informal channels pose public health risks. The Government has been urged to recognise the existence of the informal sector and license its players. About 55% of all milk marketed by some 600,000 small-scale farmers is actually sold directly by farmers to neighbouring consumers and institutions. Raw milk traders are estimated to handle about 1/3 of the total marketed milk, with only 8% sold directly to processors.

Because the informal milk sector is creating employment in the often-forgotten rural areas, as well as urban areas, the implication of this research is that the government should redesign the rules of the game to enable the sector to create even more jobs. The jobs are being created in the mobile milk trace (bicycle delivery – exclusively for young men mostly of age 20-35), in milk bars, shops/kiosks and small processors.

Issues of public health in the informal milk markets came to the fore after a study conducted by the Ministry of Agriculture and Livestock Development, Kenya Agriculture Research Institute (KARI) and the International Livestock Research Institute (ILRI) in 2000. The findings showed that up to 96% of households in Kenya boil milk prior to its consumption, which when likened to pasteurisation, ensures that all harmful bacteria are destroyed hence making the milk safe for consumption.

The report acknowledges that although there is some degree of adulteration of milk supplied through the informal channels, there was no obvious link between milk quality and the type of market agent, and there may not be serious harmful effects in the milk that eventually reaches the consumers. "Adulteration of milk through addition of water may introduce chemical and microbial health hazards as well as reduce the nutritional quality, palatability and market value of milk," says the report. Overall, only 10 percent of all milk tested was found to be adulterated, most cases occurring in the dry season when there is milk shortage.

Another major health risk is the large number (up to 15%) of both pasteurised and raw milk samples that contain antibiotic residues. The negative implications of this are that over time, there is the possibility of patients developing of drug resistance, which then would call for more expensive antibiotics and place a strain on the national budget. This requires training particularly of dairy farmers and veterinary assistants as well as drug suppliers. Training of all milk traders in quality control, including use of proven hygienic handling methods, is the main pre-condition for licensing.

The formal and the informal dairy sector relies to a very large extent on marketed surplus from the smallholder dairy producers which in 1997 was estimated at 1,093 million litres, says the report. Of this amount only 12 percent passed through pasteurisation and "formal" marketing while the remainder – about 88 per cent – was sold raw through direct sales to consumers and hotels through co-operatives, self-help groups and small traders.

The small-scale market agents include milk bars, shop/kiosks and mobile/itinerant traders, sold, on average sell 50-120 litres a day. The agents pay farmers prices that are 7 to 65% higher than those paid by the processors and charge the consumers 20-50 % less per litre for raw milk compared to what consumers of packaged milk pay.

The consumer preference for raw milk is reflected in Nairobi as well as other urban centres. This trend is spurred by the inefficiencies associated with the formal milk processors. Even when the sector was under the monopoly of Kenya Co-operative Creameries, the organisation accounted for only 25 per cent of the marketed milk. The formal dairy sector is less vibrant because of stringent regulations on quality control and packaging. There is also the large capital outlay needed to set up processing and cooling plants. The informal dairy sector also thrives on the fact that vendors make prompt payments for milk at the farm gate and they also sell at competitive prices.

3. Public Transport- the case of Matatu Transport Providers

Public transport in urban Kenya is dominated by Matatu vehicles. The term Matatu, which means "thirty cents" in local vernacular, was a standard charge for every trip made in the early 1960s. In 1973, the Government in response to lobbying from Matatu operators declared that Matatus were a legal mode of transport and could operate without obtaining Public Service Vehicles (PSV) licenses except to comply with existing insurance and traffic regulations Initially, the Kenya Bus Service- which was jointly owned by the United Transport Overseas Ltd (75%) and the Nairobi City Council (25%) - existed since 1934 as the sole legal provider of public transport services in the five major towns. It was, however, not able to cope with the increase in demand for transport services and this encouraged the growth of the Matatus from 17,600 in 1990 to 40,000 in 2003. The vehicles comprise mini-buses with sitting capacities ranging from 14 to 40 passengers. They provide employment and generate revenue for the Government in the form of license charges, duty, VAT and other taxes. In addition, the industry plays a leading part in transportation of both persons and goods in rural and urban areas.

Unfortunately, the industry's vast growth has been accompanied by increasing road traffic accidents which are caused by among other factors, reckless driving, unroad worthy vehicles, poor road conditions, laxity of law enforcement, vested interests, poor driving skills and poor working conditions. Road accidents are the third leading cause of death after malaria and HIV/AIDS and are at present a major public health problem in terms of morbidity, disability and associated health care costs.

The Matatu sector has 4 trade associations each furthering different interests of its members. The Matatu Vehicle Owners Association (MVOA) or MOA was formed in 1973 to allow owners the control of operations of the sector. The formation of the Matatu Welfare Association (MWA) in 2001 and the Matatu Stage Welfare Association serve the interests of drivers, conductors and other stage workers. Route-based Savings and Credit Cooperative Societies (Saccos) serve as welfare organisations that pool resources and redistribute them through credit schemes, organise route operations and address members' welfare concerns. Most of these Saccos were affiliated to larger organisations like MWA and MOA. The route-based organisations are generally stronger than the national bodies like MWA and MOA in articulating the concerns of the industry.

At the competition level, the Monopolies Department has had few problems with the sector associated mainly with fare fixing and route allocations. Some of their activities e.g. extorting goodwill charges from unsuspecting matatu owners in order to be allocated a route to operate in, are predatory in nature. Most of the players including their Associations have no fixed abode and therefore Department finds it difficult to serve notices on them.

The informal matatu business has thrived on the fragmented nature of the institutional and organisational structure of the transport industry. The Kenya Roads Board (KRB) which is the main institution responsible for the national road infrastructure network in Kenya, the Transport Licensing Board (TLB), Motor Vehicle Inspection Unit, Registrar of Motor Vehicles, Driving Test Center, Traffic Police and Local Authorities are under different ministries hence the lack of harmony in policy implementation.

In 2002/3, the government undertook two measures to correct the situation. First, it developed the integrated national transport policy and secondly, it introduced reforms in the operation of public service vehicles. These measures are for the purposes of reducing accidents, enhancing safety of commuters, ensuring responsibility, accountability and competence of drivers and conductors; eliminating illegal drivers, conductors and criminals that had infiltrated the industry; and facilitating the identification of vehicles and restricting their operation to authorised routes. The following provisions were provided:

- installing speed governors to control speed to 80 Kph for vehicles whose weight exceed 3,048 Kilos;
- fitting seat belts on all public, commercial and private vehicles;
- employing drivers and conductors on permanent basis;
- issuing badges and uniforms to PSV drivers and conductors;
- indicating route details and painting of yellow band on Matatus for easy identification;
- re-testing of drivers after every two years;
- prominent display of driver's photograph together with their identity card details;
- regular inspection of motor vehicle for tests and certification.

The provisions have not been effective because of:

- lack of proper enforcement by traffic police;
- discriminatory nature of rules which target only Matatus;
- high expenses of institute the safety measures;
- reduction of income for the operators owing to the fact that the seating capacity of the vehicles was reduced from 18 to 14 passengers;
- additional costs owing to inspection charges by the Vehicle Inspection Unit;
- the enhanced regulatory requirements increased the possibility of extortion for bribery by the principal enforcement agencies.

However some progress has been noted after the implementation of the reforms:

- most Matatus have been issued with compliance certificates;
- MOTC in collaboration with the National Road Safety Agency has been conducting the National Roads Safety Awareness campaign on radio, TV and newspapers as well as using billboards;
- reduction in accidents by about 73% in the first six months of implementation of the legal notice;
- restoration of sanity and order in the Matatu industry;
- defective vehicles have been eliminated;
- cartels have been eliminated or reduced by disbanding illegal groups and placing management of PSVs in the hands of their owners;
- the government has further directed all local authorities to take over management of bus parks within their areas to help remove cartels from the routes;
- two new insurance companies have started providing insurance cover to Matatus;

- crime rate has reduced owing to the requirement that all PSV drivers and conductors must possess certificates of good conduct from the police. The same requirement has also led to elimination of unqualified drivers who were major causers of accidents;
- interest is now being shown in the sub-sector by NGOs and private sector players such as insurance firms that are sponsoring seminars and workshops in safe driving for owners and workers.

4. Street Trade

Street traders are a sub sector of the MSEs that dominate the Kenyan economy. Recent Baseline Survey indicates that there are over 1.3 million MSEs which contribute 18 per cent of Kenya's Gross Domestic Product [GDP]. The survey states that about 64 per cent of the MSEs are in trade, under which street vendors fall. This sub sector is engaged in buying and selling of goods. Income from the trade sub-sector is ranked lowest among the MSE sector, but they are vital to the livelihoods of many urban and rural poor. These micro trade activities are sometimes referred to as `survivalist' enterprises - they allow entrepreneurs to survive with hardly any savings. The sector is a major source of employment and income and about 48 per cent of the operators are women

The Kenya Labour Force Survey Report of 1998/99 indicates that the sector covers all semi organised and unregulated activities that are small scale in terms of employment. The report notes that the activities are largely undertaken by self-employed persons or employees with few workers in the open markets, in market stalls, in both developed and undeveloped premises, in residential houses or on street pavements [Labour Force Survey, 2003].

One outstanding feature of street trade in Kenya is that it is viewed as anti competitive, even predatory because vendors block entrances to shops and sell similar merchandise and at lower prices than the shopkeepers. The low prices are partly attributed to the fact that the vendors do not pay taxes, neither are they obligated to pay rent and other overheads costs that the formal traders incur.

The Local Government Reform Programme [LGRP] of 1999 focused on a key policy areas such as reduction of poverty and unemployment, and promoting higher rates of economic growth. The reforms had three components:

- improving local service delivery;
- enhancing economic governance; and
- alleviating poverty through increasing efficiency, accountability, transparency and citizen ownership.

Its immediate policy focus is the removal of unnecessary regulatory barriers and the reduction of costs of doing business. In particular, the government initiated two nation-wide reform efforts, namely: the Single Business Permit [SBP] and The Local Authority Transfer Fund [LATF]. The SBP in relation to small businesses is a response to business licensing problems faced by MSEs. Business licensing is aimed at protecting consumers from exploitation, health and safety hazards and control of business activities.

Business licensing imposes costs on businesses that are often out of proportion to the benefits delivered. Further, in practice, the regulatory provisions are abused and have become merely income earning opportunities for those charged with enforcing the regulations [Devas and Kelly 2001]. While the move to have a SBP is appreciated, it has largely benefited the small and medium firms and not micro firms where the street traders fall. The micro firms have had ad hoc policy responses from both the central

and local government levels. These responses have included relocation of street traders and affirming government commitment to the sector.

On the issue of policies and regulations, most urban authorities in Kenya operate on colonial by- laws that have yet to be reviewed. The policies are deficient and the urban authorities have not only failed to enforce them, but in reality, given their form and coverage, they have not been possible to enforce. While the basic idea is that licensing which is intended to enable entrepreneurs to conduct their businesses productively and profitably, it has become a stumbling block. In spite of the number of people who can be licensed being limited, once the license is given, it is shrouded with many other outdated restrictive requirements relating to public health, building requirements, and other regulations outlined in the Local Government Act. This has resulted in most traders evading licenses, and therefore flouting most regulations laid down by authorities. There is need for local authorities to put in place relevant policy frameworks and reviews of the existing by- laws if they have to conform to government policy of enhancing the performance of MSEs. A few urban councils have reviewed the by- laws relating to street trade. Other councils continue to put emphasis on enforcement without clarity on policies and regulations. The councils have not hit a balance between order, and promoting the activities and performance of informal sector operators such as street traders. Some view street traders as a temporary problem, bound to disappear, although experience has shown the contrary. The inability to address the issues is intensified by lack of effective organisation among street traders, especially in the area of representation and advocacy on issues affecting them.

The 2002 - 2008 Kenya Development Plan indicates measures aimed at ensuring control and regulation of hawking within the Central Business District. Most urban local authorities have begun implementing this policy with due to lack of adequate space for all street vendors within the CBD. For instance in the case of the CBD of the capital city of Nairobi, where over fifty thousand street traders operate, the city has only managed to set aside sites that can accommodate about 7,000 traders. This move is positive, although the tenure remains unclear, with the urban authorities viewing the sites as temporary while the vendors view them as permanent. Although the urban authority had a plan to charge some fees, this has not been possible due to a mix up in allocation. There were cases of double allocations, infiltration by those not allocated sites and hostility directed at the City Council Authorities. This has resulted in a stand off situation that can only be solved through dialogue and negotiation. Most of these sites lack infrastructure and services and are congested. The congestion is due in part to infiltration by vendors not allocated sites, and also by vendors allocated unfavourable sites where there is insecurity and fewer customers. These are aspects that should have been taken into consideration before relocation. Past experience of ad hoc street traders' relocation indicate that without critical consideration of access to customers and security, relocation efforts will continue to be resisted.

In the relocation process, associations have not been effectively used, partly due to their fragmentation and weakness. The city authorities opted to use representatives of street traders drawn from different areas of the CBD. The role of these representatives was largely to listen to the packages being offered by the authorities, as opposed to negotiation and dialogue. Their `listening' role and failure to negotiate for appropriate relocation sites and an efficient allocation process made most street traders feel betrayed. The relocation policy would have been more successful, if the street traders had a unifying body advocating and negotiating on their behalf. Ensuring a dynamic MSE sector requires functioning associations that support entrepreneurs, lobby and dialogue with authorities for enabling MSE policies and programmes. Associations are useful for purchasing raw materials, marketing, bulk transport, sharing tools and equipment, guaranteeing loans, providing market information and linking up with training and business service providers.

5. Sector Reforms

The Sessional Paper No. 2 of 1992 notes that the role of Government in the development of the sector will be one of facilitator rather than that of interventionist. This is due to the fact that there has been concern that in attempting to intervene to help it 'grow' its dynamism, ruggedness and innovativeness may be affected. The enabling environment the government has already established or proposes to establish includes investment allowances for starting new factories outside the major cities, duty exemptions for the purchase of capital machinery for small enterprises located in rural areas, support for technological assessment of innovation, developing market incentives to encourage subcontracting to small enterprises and reducing the harassment of the entrepreneurs operating on public land or sites, setting up vocational training centres for apprenticeships etc. Several NGOs and local banks have also attempted to assist small sector entrepreneurs to access credit for start ups and expansion of their businesses

Over the years, the Government has continually recognised the role of the informal economy in several policy documents. Under the Development Plan of 2002, various rules and regulations that affect the operation and growth of the sector were reviewed. Other policy responses have included: elimination of trade licensing at Central government level; harmonizing, rationalisation and implementation of Single Business Permit (SBP); and on-going review of labour laws; relaxation of business regulations; broadening access to finance; the enactment of MSE Act; and measures aimed at ensuring control and regulation of hawking within the Central Business Districts of major towns. Under the Economic Strategy for Wealth and Employment Creation (2003-2007), the government committed itself to address factors responsible for the poor performance of productive sectors, which include: high cost of engaging in productive activities, high cost of capital particularly for MSEs and lack of supportive and weak institutions. The initiative was to be achieved by removing ***various regulatory impediments that increase the cost of doing business,*** promoting MSEs by finalizing and implementing a Sessional paper on the sector, ***focusing on employment creation and formalisation of informal activities.***

The strategy paper further states that the formal and informal sectors in Kenya are basically the same, and the only difference being size. The latter are however denied essential services as ***well as infrastructure as they do not pay taxes.*** The Paper proposed to eliminate this dichotomy by providing infrastructure and services, particularly financial, to small and medium enterprises and by ***ensuring that they pay taxes***.

In the past, the emphasis on the formal private sector has exposed the private informal sector to the vagaries of bad governance, dominated by inefficiency and rent seeking bureaucrats and policy makers. Such officers have been more concerned with rent seeking rather than ensuring the formalisation of adequate policies and efficient implementation of policy provisions. The Policy concern therefore has been how to provide equal opportunities to both the informal and formal sectors of the economy as their integration would lead to one vibrant economy.

Under Vision 2030, Kenya' aims to be a newly industrializing "middle income Country providing high quality life for all of its citizens", the government has therefore committed itself to "raise the market share of products sold through ***formal*** channels (e.g. supermarkets) from the current 5% to 30% by 2012…..this will also contribute an additional Kshs.50 billion to the GDP. At producer level, the plan aims at building "Producer Business Group" (PBGs) which will in turn feed large wholesale hubs principally in the rural areas. These hubs will be "Tier 1" retail markets which will provide the primary producer with better value than at present when markets are heavily fragmented."

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LITHUANIA

In 2005, the Competition Council of the Republic of Lithuania (further – CCRL) conducted an investigation of a cartel agreement in the taxi passenger carriage service market in Vilnius. The entities operating in the market were established to have been engaged in practice which could be assessed from the point of view of "informal" economy. The CCRL conducted the investigation within the limits of its competence, i.e. exclusively on the basis of the provisions of the Law on Competition (LCRL) therefore the provisions and some of the considerations presented below concerning the informal economy may be considered as assumptions only, rather than as facts or an *a priori* evidence.

The investigation was started by the CCRL *ex officio* after, in September 2004, representatives of the Vilnius Association of Taxi Service Providers (VATSP) through mass media were publicly urging carriers of taxi companies to increase the taxi fares. The CCRL issued a written warning to the heads of the Association to the effect that such incitements contradicted provisions of the LCRL. Despite the warning, the passenger taxi fares were simultaneously and equally raised (the investigation established that the decisions to simultaneously increase the fares were passed in the meetings of the VATSP).

At the close of 2004, there were 60 taxi companies operating in Vilnius under the licence issued by Vilnius Municipality. At the time the companies were fiercely competing for passengers and as a result, many of them were charging fares below cost (taxi fares in Vilnius at that time were among the lowest in Europe). This could primarily be accounted for by their informal operations seeking to disguise the actual revenues thus avoiding paying the State taxes. In reality, very few of all legitimately operating companies were behaving in a "civilised" way, i.e. were in an orderly manner paying taxes to the State. The market leader UAB Martono Taksi had over 100 own vehicles complying with the relevant international standards in 2004, it was employing drivers, paying them regular salaries and was properly managing its accounting records. UAB Martono Taksi was among the founders of the VATSP. Surprisingly, it was this company that acted as an initiator of the cartel agreement. In its explanations to the Competition Council the company pointed out that the public inducement to increase the passenger carriage fares was a means to draw the attention of the respective institutions to the illegal operations of most of the taxi companies in Vilnius that do not pay the respective taxes to the State or salaries to the drivers they employ, i.e. are involved in informal activity.

In this respect it is notable that according to the then effective laws and the procedure governing the operations of passenger carriers that are assigned to the area of municipal regulation, taxi companies were still not subject to the requirements in compliance with the European Union standards. For instance, a taxi company holding an appropriate operating licence and registered as a private company (UAB) was not required to have own vehicles, i.e. the company could hire private carriers with their own vehicles. The make of vehicles and their manufacturing year (depreciation degree) were virtually not regulated. Such taxi drivers were required to pay to the private company a small (token) fee and could retain the balance of the fees received from the passengers without declaring the actual income. According to the Law on Value Added Tax effective at the time to acquire the status of a VAT payer the annual income of an operator must be not less than LTL 100,000 (EUR 28,962). Thus when approaching the threshold some informal taxi companies would wind up their operations and establish a new (subsidiary) company. Under the circumstances the initiator of the cartel agreement – UAB Martono Taksi was not in a position to compete on equal terms with other taxi firms acting informally.

Having completed the investigation in February 2005, the CCRL concluded that the Association of taxi service providers and some of the companies providing taxi services in Vilnius had infringed the requirements of Article 5 of the LCRL – having concerted their actions in the beginning of October 2004 unanimously increased the passenger carriage fares, i.e. committed concerted actions that contradict the provisions of Article 5 of the LCRL. A total of ten taxi companies of Vilnius were acknowledged as having infringed the LCRL and were subject to fines for the committed prohibited actions – conclusion of agreements which aim to restrict competition or which may restrict competition including the agreements to directly or indirectly fix prices of goods (services) and fix other purchase or sale conditions. UAB Martono Taksi was acknowledged to have acted as an initiator of the prohibited agreement and was subjected to the largest fine.

The companies – members of the Association of Taxi Service Providers, in disagreement with the Resolution of the CCRL, appealed the Resolution to the court. The Supreme Administrative Court of the Republic of Lithuania that passed the final decision in the case ruled that the companies providing taxi services in Vilnius concluded, by means of concerted actions, a prohibited agreement concerning the service fares that distorted competition in the taxi service market and were damaging consumer interests.

MONGOLIA

There are statistical evidences showing an increasing role of informal economy since 1990 where Mongolia transferred from centralised economy to market economy. For instance, during middle of 1990-s informal economy comprised less than 5% of GDP whereas according to the statistical data 2004, it reached 11.3%. However, some informal reports confirm that it was more than 11.3% and might have reached even 40%.

Therefore, we would like to briefly discuss meat market as meat is mostly supplied by informal sector to the market.

Meat market:

Our country consumes about 250 tons of meat yearly, 12.7% of which is prepared and supplied by formal sector, i.e. enterprises, and the rest (87.3%) is by informal sector which means hand prepared. In other words, meat market is a unique market that is basically occupied by the informal sector.

Product market of the product is not limited by one another, as they can replace each other (cow, horse, goat, sheep, and camel meat) and therefore can make up a common market. In the market research, geographical market of them defined to be Ulaanbaatar as a whole one market.

Hand preparing process belongs to informal sector for it includes mainly not registered, part time workers who don't pay tax, social insurance, and middle men or 'profit reseller'.

Meat preparing process for the meat to consume by Ulaanbaatar contains following stages:

	Hand prepared/Informal sector	**Prepared by industrial method (manufactured)/ formal sector**
Stage 1	Negotiate with local herdsman /in countryside/ on price and buy livestocks from him/her	Negotiate with local herdsman /in countryside/ on price and buy livestocks from him/her
Stage 2	Supply to and butcher in stocks from central and western provinces the wholesale market at west edge of Ulaanbaatar, and stocks from eastern province to 'Nalaih' wholesale centre at the west edge of the city.	Prepare/ butcher stocks, and supply to relevant shops.
Stage 3	- Between 9 and 10 middle men at wholesale markets such as Nalaih, Huchit shonhor and Emeelt resell their products they bought early in the morning, to slaespersons of Huchit shonhor or salespersons of other city markets and retail shops. - or they personally transport them to retail shops.	
Stage 4	- Salespersons from retail food shops purchase meat graded/ sorted and prepared in Huchit shonhor - Middle men personally transport the meat to shops and sell it.	

In the first stage, herdsmen prefer to sell their stocks to middle men /informal sector/ as to manufacturer for number of reasons such as many kinds of documents they asked to provide.

Cost per 1 kilogram meat shown in the table. /As an example, average price for sheep and beef is displayed/: /as of 1.12.2008 1USD=1165₮/

	Hand prepared		Manufactured	
	Sheep	**Beef**	**Sheep**	**Beef**
Stage 1	3000	3500	3300	3750
Stage 2	3150	3800	-	-
Stage 3	3650	4300	-	-
Stage 4	3770	4500	4200	5000

Based on the data above, we can see that manufactured meat cost more than hand prepared meat. Although in terms of quality and hygiene, manufactured meat is far better, customers tend to buy more from hand prepared meat.

Moreover, the fact that they can hand prepare meat and supply them on less price than otherwise is a leverage in competition to others and encourages therefore to run a 'unregistered' business.

For reasons above mentioned, tax, social insurance structure and standardisation requirements individuals tend to run an informal business. Thus, manufacturing method is not still prominent. By providing services and products that meet consumer immediate need Middle men and Profit reseller /business men in informal sector/ make their living. Although that is a source for living for many people, government is putting more importance in transforming informal into formal sector.

PAPUA NEW GUINEA

1. Introduction

Papua New Guinea (PNG) has a relatively small dual economy, comprising a formal and informal economy.

The formal economy is dominated by large-scale resource projects, particularly in mining and petroleum, and through tax and royalties provides a large proportion of government revenue.

The informal economy supports 85% of the people through semi-subsistence agriculture. The formal sector employs around 15% of the workforce.

PNG has an abundance of natural resources including:

- Large reserves of minerals.
- Extensive forestry and fishery assets.
- Significant potential for agricultural expansion.

The informal economy is characterised by local trade stores, market gardeners and other small agriculture operations, fisherman and local markets.

Village-based agriculture supports over 70% of the population, and domestic trading of fresh produce is a very important source of cash income.

By far the most important crops in PNG are sweet potato, bananas, yams and taro which comprise the dominant staple food for over 75% of the rural population.

The main agricultural export commodities are timber, oil palm, coffee, cocoa and coconuts. Forestry is PNG's third largest revenue earner and a major contributor to economic and social development. Much of this production is undertaken by small landholders within the informal economy, trading with local intermediaries who then deal with the larger factories and production houses in the formal economy. There is also a significant trade in betel-nut (a stimulant which is widely used in PNG) which operates only in the informal market, through street vendors.

PNG has several significant competitive advantages in relation to the production of timber - available land, good soils and climate, and a long history of successful incorporation of trees into agro-forestry systems.

The forestry and mining sectors are export oriented and are dominated by international or multinational enterprises. While there have been many instances reported where traditional landowners' interests are said to have been ignored or environmental and other regulations have been disregarded by mining and forestry operators, those issues are not relevant to the discussion in this paper.

The PNG fisheries zone of 2.4 million square kilometres is the largest in the South Pacific. The fisheries zone includes an extended reef system, numerous islands and an extensive coastline. These create huge opportunity but also present an enormous challenge for monitoring and control. The total market value of the PNG catch is estimated at $A140-160 million, a significant proportion of which is traded through the informal economy, rather than being supplied to fish canneries or otherwise going into the formal economy.

Pigs and poultry are important village animals within the informal economy and there are some live exports of cattle from PNG from larger producers within the formal economy.

There is particular need to develop the informal sector (including those involved in village level production and marketing of root and horticultural crops, small livestock), to improve the productivity of major tree crops (increase production and exports, lower production costs), and to support research and development that assists in diversification of the agricultural export product base.

2. PNG Competition Law

PNG has been an independent nation since 1975. For many years it was thought that the economy had not developed enough to warrant competition law.

Furthermore it was felt that part of this lack of development stemmed from the fact that the informal economy was so large and that that economy did not warrant or need such regulation.

There was some limited consumer protection law and price control. Furthermore with most utilities being provided by the national Government, time was not ripe for competition law. Industry was largely Government run or controlled.

However with the move to privatisation of some utilities and the development of the PNG formal economy, competition law was introduced. That process commenced in 1996.

Competition Policy and Industrial Policy became part of the same goal, economic efficiency and consumer welfare.

The policy was to open up markets to imports, foster exports and generally encourage competition. Further, industries that lacked competition, often through the small size of the market creating natural monopolies, were subject to regulation by the competition regulator, including price control in some limited circumstances.

In 2002 the PNG Parliament enacted the Independent Consumer and Competition Act 2002. It created the Independent Consumer and Competition Commission (ICCC). The ICCC, the consumer protection provisions and the utilities regulation provisions came into effect on 16 May 2002. The competition provisions did not come into effect until 16 May 2003.

The competition provisions, referred to as the Market Conduct Rules, are based on those in the New Zealand Commerce Act and are similar to the competition provisions applying in most developed economies. Broadly speaking, the Market Conduct Rules prohibit arrangements which substantially lessen competition (with a per se prohibition of price fixing); resale price maintenance; exclusionary conduct (primary boycotts); and misuse of market power (abuse of dominant position). Anti-competitive mergers or acquisitions are also prohibited. Authorisation by the ICCC on public benefit grounds can be applied for – a small number of authorisations on public benefit grounds have been approved by the ICCC since 2003 for business acquisitions or anti-competitive arrangements.

The law is tailored to meet PNG needs. In particular there are provisions regulating PNG monopoly (government owned) utilities. There is also provision for price control, though the number of products which are currently subject to price control or price monitoring is very few.

In effect the ICCC Act has an overall competition and consumer protection mix. In addition the Act has extensive and some unique provisions relating to essential utilities which affect the bulk of PNG consumers.

3. Competition policy and the informal economy

Generally the PNG informal economy ignores economic regulation such as the competition and consumer law. One principal reason for this is geography; PNG is one of the least urbanised countries in the world, with upward of 80% of the population living in non-urban areas. It is in those localities that the informal economy mainly operates. Many of these localities are in remote areas where access is difficult, frequently with no road access and no telephones or other ready means of communication. In such places it is not possible for the ICCC, as the competition and prices regulator, to operate, nor are commercial goods and services readily available.

Thus while in PNG there is still some price control, it has been very difficult to police such law in the informal economy. For instance, the wholesale and retail margin for petrol is price controlled and in local areas trade stores sell petrol, rather than service stations, but their cost structures, freight costs and other factors make the imposition of maximum margins irrelevant and impossible to enforce anyway.

We see the informal economy as having only a limited impact on the formal economy. The informal economy is critical on the one hand for feeding the PNG population in both rural and urban areas, and on the other hand for providing the source of much of the products for export.

As a competition regulator the ICCC does not ignore the informal economy. However we see little reason or opportunity to enforce competition laws in that economy, even though our law covers all PNG commerce. Much of what happens in the informal economy is guided by traditional culture and not competition dictates.

We do however seek to inform the informal economy about our roles and how competition law may assist the informal economy *vis-à-vis* the formal economy.

Some of the informal economy has formed itself into co-operatives, in areas such as growing coffee, oil palm, vanilla and other similar agricultural products for export, and these bridge both economies. It is at this intersection of the informal and formal economies that the ICCC has potential competition issues with co-operatives as distinct from the members of the co-operative. For example, some processing co-operatives tend to rely, in their dealings with individual growers, on market sharing, price fixing and other anti-competitive arrangements between processors, to the potential detriment of the growers. However, growers with limited education or knowledge of their rights are often happy to receive a fixed price from one processor for their product, notwithstanding that they may well be able to get a better price if processors were competing to purchase their raw products.

We expect over time that the gap between the two economies will diminish as more of the informal economy will either feed into the formal or create corporate structures that move into the formal. There have been examples in the last two years where participants in the informal economy have been moving towards the formal. Street vendors who in the past have been selling food and handicrafts have, since the introduction of competition in mobile telephone networks, begun selling pre-paid telephone cards, which have now become a high proportion, by value, of those street vendors' business. This has caused those vendors, and their customers, to become more aware of the existence of regulation in the formal economy.

We at the ICCC will assist in that transition including ensuring that anti-competitive conduct does not impede the transition of the informal sector or hamper it in any way.

In many ways the informal sector is the cultural backbone of PNG and a competition and consumer agency has to assist to foster the country's economic culture towards the international, globalised economy in which we all now operate.

PERU[1]

1. Introduction

The Political Constitution of Peru (1993) rules that the State promote and guarantees to firms and consumers their participation in the market governed by the principle of free competition and free private initiative.

Under an economy of social market model, the role of the State is not reduced, but oriented to supervise and promote the investment, taking part only in the provision of goods and services when the private sector is not able to supply them and or to mach the demand of basic needs (health services, education, basic infrastructure, and the likes).

The constitutional frame guarantees the free competition and protects consumers, and it allows design policies and practices as instruments to reach these economic and social objectives.

In effect, academics argue that in a competitive market, the consumers will benefit from low-price goods and services, better quality and product diversity. The competitive process allows consumers to choose the product according to their needs and budget restriction.

On the other hand, the companies may obtain benefits because the market forces them to be more efficient. In competition, the companies will reduce their total costs of production (productive efficiency), increase the quality and diversity of their products or services and provide to the consumers products with prices near their costs. As a result, competitiveness of the companies will increase with the possibility of successfully taking advantage of a process of economic integration (e.g. Free Trade Agreement).

Finally, the government will also be benefited. The competition will expand the national product because of the increase in tax collection, or the availability of more budget resources. This will make possible for the government to be in better position to finance the provision of public goods and services, allowing citizens to access to these ones and improving their living conditions.

Theoretically, in order that an economy may work close to a competitive market and, therefore, obtain more efficient results, the following conditions are necessary:

a) the existence of many suppliers in such a way that can not influence negatively in some commercial conditions;

b) goods are the most homogenous possible;

c) consumers have enough information so that they can make their better consumption election; and

d) there are few trade barriers in the market.

[1] Juan A. Candela Gómez de la Torre, Presidente de la Sala 1 del Tribunal de Defensa, de la Competencia y Propiedad Intelectual (INDECOPI), Lima, 16 February 2009

Nevertheless, markets are imperfect, on the contrary, they have failures (i.e. natural information asymmetries, monopolies, anticompetitive behaviour, high entrance barriers, product heterogeneous**)**, witch prevent that market agents reach their objectives with efficiency. For these reasons, the state may intervene establishing and executing policies that allow obtaining efficient results in a competitive market.

In addition, competition and practice policies have as objective to contribute with markets in which competition is possible and desirable, assigning economic resources for the benefit of consumers, companies and the government. It also generates social efficiency.

In Peru, at the beginning of the 90s, the government created a legal framework to protect and promote the market competition, and to protect consumers and intellectual rights[2]. The leading institution INDECOPI appears as an administrative agency within a national system. It roles is to arbitrate and promote the market development, applying competition policies with the objective of correcting some of the failures that can be observed in the market working against the normal development of the competitive process. Thus, for example:

- It applies the free competition regulation to prevent the anticompetitive behaviour that produces an artificial deviation of the competition market, by the arbitrary agents who abuse of their position of dominion.

- The information asymmetries that increase the costs of transaction in the consumption relations, which fought by the Commission of Consumer Protection

- The Commission of Bureaucratic Barriers Elimination fights the trade barriers imposed by the State thought acts or normative devices that constitute an irrational or illegal barrier to access to the market.

- The lack of products and services homogeneity is object of the Control and Standardisation Commission of no Tariff Commercial Barriers.

As it is mentioned previously, we will analyse how the informal economy existence affects the application of Competition Policies by the Competition Authority.

2. What is the Informal Economy?

It is true that there is not an exact definition or concept to define and conceptualise the phenomenon. Usually, the concept use depends of the aim and scope of the study.

The modern and accepted definition is that the informal economy is part of everybody's daily life. In fact, it is a reality of the world, exists everywhere and gets larger everyday. It exists in less development countries as development ones.

The economic development theory tries to explain the causes of underdevelopment by using the dual analysis of the economy. For instance, rural and urban sectors have also been divided into formal and informal sectors. This designation was not intent to contribute to an academic proliferation of labels; was merely an analytical terminology to describe a duality that avoids the bias against the low-income sector inherent in the traditional-modern dichotomy. Both sectors were qualified as modern; both were the consequence of the urbanisation process that has been take place in different LDC´s. Academics used the

[2] BOZA, Beatriz. *The role of Indecopi in Peru: The first five years.* In: Peru's Experience in Market Regulatory Reform 1993 – 1998. Indecopi. Pág. 1.

terms "large-scale" and "small-scale", but those terms were purely descriptive and no saying anything about why one sector is large-scale and the other is small-scale.[3]

It was added that

> *"one important characteristic of the formal sector is its relationship to the Government. Economic activities formally and officially recognised and fostered by the Government* ***to*** *enjoy considerable advantages. First, they obtain the direct benefits of access to credit, foreign exchange concessions, work permits for foreign technicians, and a formidable list of benefits that reduce the cost of capital in relation to that of labour. Indirectly, establishments in the formal sector benefit immeasurably from the restriction of competition through tariffs, quotas, trade licensing and product and construction standards drawn from the rich countries or based on their criteria. Partly because of its privileged access to resources, the formal sector is characterised by large enterprise, sophisticated technology, high wage rates, high average profits and foreign ownership.*

In addition, it was written that

> *"The formal-informal analysis applies equally well to the agricultural sector. The parallels are obvious and striking. The division between operators with licenses and those who does not have licenses in urban areas is reproduced in agriculture between those who grow tea and coffee with official punishment and those who do it illegally. Their similarity to urban squatters is obvious – both are irresistibly drawn to real or perceived sources of wealth, despite legal restrictions of access.*

Some authors said that this concept is related to illicit activities in general (e.g. illicit traffic and drug production, smuggler, and the likes) and llicit

Table 6. Picture 1

TYPES OF ACTIVITIES OF THE INFORMAL ECONOMY				
TYPE OF ACTIVITY	**MONETARY TRANSACTIONS**		**NON MONETARY TRANSACTIONS**	
Illicit activities	Commerce of robbed goods, traffic and drug production, contraband; swindle; and the likes		Drug Exchange, goods o contraband; robbery for personal use	
	Tax's Evasion	**Tax's Elusion**	**Tax's Evasion**	**Tax's Elusion**
Illicit activities	Non declared illicit activities income coming from works by own account; pays and assets coming from declared works not related to allowed goods and services	Discounts to employees,	Goods and services Exchanges	Works" made in house

Source: Schneider, F and D. Enste (2002), "Hiding itself in the shades, the growth of the underground economy" Subjects of Economy the IMF. Peruvian Institute of Economy.

[3] From ILO Mission, Employment, Incomes, and Equality: An Strategy for Increasing Productive Employment in Kenya, Geneva, 1972, pp. 5-8, 503-8

But, from the institutional theory point of view, it is understood that institutions are those forms to think, to act and to feel, that members of a society share, and that allow them to interact under more or less predictable rules**.** Under this concept, the role of the institutions is to reduce the costs of transaction in the social and economic relationship. In this sense, Douglas North has stated that "*institutions would be the rules of game in a society; or formally talking, they are the human restrictions that model human interaction*"[4]

On a first stage of the society, when social relations were less complex, the coexistence norms that rule the behaviour between the members of the locality were based on consuetudinary rules. When the society relationship became more complex, it was needed the creation of rules that established how the market behaviour should be, and, mainly how to make them effective, in order to be able to avoid social conflicts between the market agents. In this scenario, the State was born thought its power in order to create rules that will govern the economic and social relations, monopolising its execution based on the law regimen.

From this point of view, the informal economy can be defined as those:

> *"activities that are based on illicit acts to be carried out (...) they are activities that intrinsically do not have a criminal content, but , in spite of being allowed activities in a country, have to use an illicit behavior to be carried out".* [5]

Moreover, on an interview given by the anthropologist Jaris Mujica, who lived in one of the poorest and marginal districts of Lima, in order to analyse the informal market of cellular phones, he defined as:

> *"The word Informal means all those practices, systems and orderings of local, economic and familiar structures that do not work within the structural legal formality, nor within the legal processes and either within the correct process of an Ethic's Codes.*[6]

It is possible to affirm that as a whole the word "informal" means that in a society there are activities which exist outside of the law. Thus, for example, the case of the "pirate taxi drivers", whom without being registered offer a transport service to the public. As it is possible, its purpose is allowed as a way of living, and with their work simultaneously they are offering a public service; however, the ways they are using are illicit because they do not count on the respective license, probably without paying taxes and without following environmental regulations. Therefore, in spite of the allowed purpose, the activity as a whole is illicit because is unprotected by the law.

In the informal economy, economic agents can be observed from the supply side or the demand side. The formality for companies could mean a high cost that will reduce competitiveness to them, reason why it turns out more beneficial to stay in the parallel market. In addition, all supply responds to a demand, therefore, if an informal supply exists is because a group of consumers who buy at this market exists, probably because it is less expensive for them.

In this respect, Jaris Mujica says:

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4 NORTH, Douglas. *Institutions, institucional change and economic performance.* Cambridge University Press, New York, 1995, pág. 3

5 GHERSI, Enrique. *Informal Economy in America.* En: www.anfe.or.cr/ghersi_economía_informal.htm (searched on January 26th, 2009).

6 Interview published in El Comercio on September 27th, 2008

> *"When these informal practices are no longer controllable or when the cost of the control is greater than the benefits the company receives, the let fight itself. As a consequence the interrelation between the informal and the formal begin to coexist until the point that some companies cannot subsist in the formality if they are not supported by informal practices".*[7]

In that sense, the informality is not a problem that is exclusive of the developing countries, but also, of the developed countries. As an example, is only enough walking by the streets of Miami, Rome or Madrid where the informal ambulatory commerce is for immigrants a way of living.

2.1. The cost of formality and informality

According to Doing Business 2009 studies, in countries where it has been observed a more onerous regulation for the economic agents, and where the trade barriers are, the informality levels increased. In that sense, it has been affirmed that:

> *"The investigations generally reveal that in countries with an overwhelming regulation display, an informal sector of high dimensions, higher unemployment rates and a slower economic growth."*[8]

In that sense, the policies that the State rules in order to insert measurement to the economic agents at the formal sector will depend on their efficiency, but at the same time of giving legal norms that will govern the economic relations. For that reason, it has been indicated that the informality is not other thing that the inefficiency of the law.

> *"The origin of the informality (...) is found in the inefficiency of the Law. In technical terms, we are informal by the cost of the legality. The politicians, the legislators, and much less, the lawyers do not understand that the law costs like any other thing (...) a prosperous country has a low law cost in comparison with the income of the population; a country that is not prosperous has a low cost".*[9]

Following the classic economic theory, if we begin with the premise that the economic agents are rational in taking their decisions, making a cost - benefit analysis; then, it is possible to affirm that in an excessively onerous legal frame, the election of the agents to remain in the informal sector is rational, because it is less expensive for them, even if they take into consideration the possible fines and sanctions that the authority can impose to them if they are detected in the informality.

Therefore, Ghersi argues that the informality is not -as it is implicitly affirmed in some texts of sociology- part of the idiosyncrasy and Latin American towns' inheritance that comes from our indigenous and colonial past. In other words, the problem of informality existence does not have its foundation in a cultural problem, a religious dogma or an ethnic origin. The problem of the informality has its origin in the inefficiency of its own legal ordering and, finally, in the State that not creates an efficient normative frame that stimulates the companies to act and to operate within a frame of formality.[10]

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7 Ibid

8 Doing Business 2009. World Bank

9 GHERSI, Enrique. Op. Cit.

10 Ibid

2.2. The cost of formality

The costs of the formality are divided in two (2) groups: the costs of the formal sector access and the costs of permanence.

In relation to the access costs usually it is mainly related to the bureaucratic barriers that the own administration imposes. An example will allow us to illustrate it. In 1983, the economist Hernando De Soto[11] made a study taking as a model a dressing factory at an industrial zone of Lima. With this purpose, a work group was hired to begin and complete all the necessary legal proceedings without paying the bribe unless this was necessary to continue with the experiment. Results of the study showed that the whole process took ten (10) months and employees were asked for briberies in ten (10) opportunities, and in two (2) of them, they had to pay the bribe in order to get the licenses.

Additionally, a total of US$ 194, 40 payments among rates and other requirements had to be done. The legal cost of registry was equivalent to thirty two (32) times a vital minimum wage. In comparison, another group was in charge to do the same procedure in New York and Florida, which took between 3 and 4 hours, respectively.[12]

Consequently, it is possible to argue that the costs of the formality depends on the normative frame, and also implies the following concepts: (i) the incurred expenses to obtain the qualifying titles to operate in the market; and (II) the cost of opportunity translated in the time and allocation of resources for the fulfilment of the legal exigencies.

On the other hand, once an economic agent has accessed to the formal market, its relation with the state regulations does not end there, it follows with a great number of norms and costs of remaining in the formality.

According to De Soto, the term, in a broad sense, includes the costs imposed directly by the legislation such as the taxes, the payment of labour rights, the accomplishment of certain administrative proceedings, and the likes. In addition, there are costs indirectly imposed by the legal institutions as the instability of the legal system and the inefficiency of the Justice System to solve the possible conflicts that happen between the economic agents. The permanence costs have been divided in groups: tax burden and tax bureaucratic regulations and bureaucratic or administrative processes requirements.

As it is known, taxes that a formal firm must pay are the main income source for developing countries. The control of the tax authority is easier when a formal firm is registered, but it does not happen with economic agents who operate informally. For that reason, the informal firms or firms that develop part of their activities informally have a competitive advantage forehead the companies that fulfil their taxes obligations.

According to the Doing Business study in 2009, in countries where the taxes are high and the benefits come from their taxes, the informality tends to be increased. For the economic agents, the decision of following or not tax regulations do not only depend on what onerous is the level of the tax rates, but also how complex are the administrative procedures for the fulfilment of the tax obligations.

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11 De Soto, Hermando. *The other path*. El Barranco publisher, Third edition, Lima, 1986, pag. 173 y 174.

12 Ibid

> *"The economies that are in the first level, and offered taxes facilities usually count on lower business taxes. In addition, they have simple administrative taxes processes for a tax declaration".*[13]

For that reason, in order to struggle the informality stimulating the fulfilment of the tax obligations, the State must give an integral reform establishing low tax scales and the best legal frame.

On the other hand, there is another type of regulation that affects the costs of the permanence of the economic agents in the formal sector that is related to the labour costs.

In effect, in countries where the labour norms impose strong limitations for dismissals or work schedules, the companies are going to avoid completely the minimum labour norms, operating in the informality. In that sense, governments must look for equilibrium between norms that offer certain protection to the workers avoiding social conflicts and those that allow the flexibility in the labour market with the objective of reducing the competitiveness at the formal companies and stimulate the growth of the informal sector.

In this regard, the study Doing Business 2009 says:

> *"at the developing countries, it is frequent that the regulators are mistaken towards an end, the excessively regulations contribute to increase the informal sector. This model is evident in Venezuela and Bolivia: both have laws that prohibit the dismissal of workers by economic causes and both are between the five economies with a big percent of informal sectors…"*

The high labour costs, especially in the developing countries, cause formal firms to be less intensive in the use of the work factor for their production and, on the contrary, induce the agents who have capital assets to use it in an intensive way.

Finally, these costs of permanence could determine that the economic agents assign their resources to have a better knowledge of how following the regulations, which finally could give as a result that the permanence of the companies in the market depends not as much on the efficiency of its productive process, but how efficient is their relationship with the government".

2.3. The informality cost

There are two groups of costs for being informal. The first one is about the costs from the punishment that is imposed when the authority detects an informal activity, and the second one is referred to the impossibility of being benefited with the goods and services provided by the State. [14]

In effect, the informal agents provide certain amount of resources with the object of not being detected, and not being punished by the State. Generally, these punishments are hard enough and imply in most of the cases a considerable part of what they own (e.g. the informal manufacturers of pyrotechnics), reason why many agents destine part of their patrimony in bribes, which also stimulates the government corruption. Additionally, with the purpose of making up or attenuating their existence in the market, the companies reduce their efficient production for not being detected.

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13 Doing Business (2009) World Bank

14 LOAYZA, Norman. *The economics of the informal sector. A simple model and some empirical evidence from Latin American.* The World Bank, Washington D.C.

On the other hand, the informal agents are disabled to benefit from the services that the government offers in the market, specially, the services of the judicial and legal system and from security forces. In effect, considering that the informal activities are outside of the legal frame, the informal industrialists cannot completely have their own property rights. In that sense, in the informal sector, the transaction cost is increased due to the uncertainty of its execution.

In addition, other cost of the informality considered refers to the reduction in the internal investment and that originating one of the markets of capitals. In effect, according to an study made by De Soto, the families, who lacked a property title or had a unstable title in Peru, did not invested much in the construction of its own house until the property of the land -where they lived- was adjudged to them legally.

In relation to the reduction of the market's investment, this one was pronounced in the following inefficiencies: i) the high interest rates that the informal economic agents paid; ii) the low value of appraisal destined to the informal activity, and iii) the difficulty to transfer the property and to create corporations of common shareholders.[15]

3. Impact of the informality in Peru

According to the arguments that have been said, the magnitude of the informal sector in Peru would be equivalent to a 35% of the PBI (GDP); whereas a 60% of the working hours are developed in the informal market.

From the social and economic point of view, Ghersi has concluded that the informality in Peru is high. If 60% of the **toiled** hour-men are in the informal sector, then the government only controlled four of every 10 hours that the Peruvians worked; this means that the Peruvians worked 6 hours outside the Law. In addition, in spite of its quantitative importance, of the preceding data, it is concluded that the informal sector has a low productivity, since 60% of the work only make 35% of the production.[16]

4. Origin of the informal economy in Peru: The migratory phenomenon

De Soto[17], argues that the economic and social changes that have taken place in Peru, began with different migratory events that determined that the population of the country began itself to concentrate in the cities, whereas the rural areas were remained vacated virtually. In a period of almost 40 years, from 1940 to 1981, it is observed that almost 2.4 to 11.6 million of the urban population have been increased whereas the rural populations only increased in a third (4.7 to 6.2 million). This means that in 1940 two (2) of each three (3) Peruvians were living in rural areas, whereas in 1981 the figure is reversed and two (2) of each three (3) live in the city. It comes off from next chart:

15 LOAYZA, Norman. Op. Cit.

16 GHERSI, Enrique. Op. Cit.

17 DE SOTO, Hernando. Op. Cit.

Table 7. Table N° 2

Year	Urban Population (%)	Rural Population (%)	Total Population (Millions)
1940	35,4	64,6	7,1
1961	47,4	52,6	10,4
1972	59,5	40,5	14,1
1981	62,2	34,8	17,8
1993	70,1	29,9	22,6
2005	72,6	27,4	27,9

These migratory surges were stimulated by the deep differences that have existed between the city and the rural area, mainly in the provision of basic services and the opportunities of better life conditions. Thus, for example, in the study of De Soto, it is mentioned that the migrations were stimulated by the low rates of infantile mortality that existed in Lima, because of the improvement of the services and medical covers in the city.

Another factor that has been mentioned is the opportunity of a better salary, thus for example, it is mentioned that in 1970, a worker who left the rural area to be used as worker in the city received a high salary.

Another factor that explains the migratory phenomenon is the high degree of centralism that has existed in Peru during its republican history. In effect, the growth of the Public Administration, were an attractive reason for the country side settlers who looked for being close to the political decisions; as well as looking for opportunities to work like private sector or government employees.

Finally, according to De Soto, the most important factor that increases the migratory phenomenon is the difference in the educative level that existed between rural and the urban areas.

Nevertheless, the migration was not an easy change for the settlers who moved from rural areas, because they would find a hostile reality. In the first place, they had to face negative feedbacks for the traditional high class, that in the facts were translated in a social and racial segregation.

Perhaps, the most important obstacle that was faced by the immigrants was that the enterprise sector was not able to create the sufficient jobs for the increasing supply of manual labour of the rural immigrants. At the present time, the enterprise sector has the same problem for immigrants, the urbanisation-industrialisation matrix have not let work as a factor of attraction for the immigrants, who see in the city as an opportunity of integration to the modernity or as a way to have better jobs in order to improve the quality of life.

Nevertheless, not all the people have been able to have a job in the city, as an example, the following he has pointed:

> *"In certain cases, it is common that the companies do not resort to the work market to contract workers, because they prefer to hire people "recommended" by their own workers, in order "to place" relatives, friends, countrymen, or others."*

This determined that the marginalised immigrants of the formal labour market, by the incapacity of the state and the enterprise class, saw themselves in the necessity to auto generate their own entrance

through the informal economic activities such as the ambulatory commerce, (e.g. pirate transport), etc.; which did not require of a specialised and described knowledge, but a lot of effort and sacrifice.

The phenomenon was denominated "the marginal pole of the economy" that includes economic activities made by immigrants whom not had the opportunity to be inserted satisfactorily to the layers of the labour and social formality. This is the group of people that it has been able to generate a deep change in the social, labour and economic relations in the conservative and traditional cities.[18]

From another point of view, informal sector appeared in Peru because the economic grow model that focused into exploit natural resources to export raw material likes minerals. Big corporations concentrated their activities in certain rural areas almost without linkages with other local activities. On the other hand, main manufacture and trade firms began to develop their production activities (60%) mainly in Lima, the capital of the country. This was the main cause of the migratory process and the origin of the informal sector in Peru.

5. Policies adopted for reducing the informal economy

The government has taken a set of policies to reduce the informal activities. These include legal measures to reduce burden tax, administrative tax procedures, labour and product regulations and administrative processes for setting and operating firms.

Decrease of informality does not need the establishment of a strict punitive system because it will be fruitless if Public Administration does not additionally count on an adequate and effective supervision system that timely detects the violation to law. In addition, besides that, a merely repressive system could give to the informal economic agents an incentive to invest in sophisticated mechanism for covering up and increase the corruption of public officials.

The Administration should foster the passing of policies in order to insert informal agents to formal sector by reducing access and permanence costs.

The last Peruvian Administrations have made important steps. For example, in tax policy, The Government enacted the Legislative Decree 771 by means of it was created the named Unique Simplified Regime (RUS) which had as a general objective to simplify the fulfilment of taxing duties in favour of the citizens and make it easier its management for Tax Administration. The principal objective was to expand the number of taxpayers by incorporating into formality to persons and small business that were performing economic activities in the informal sector. The mechanism used was to establish a unique and flat payment for considering accomplished the obligations related to income tax and value added tax without needing the presentation of tax declaration neither registration of accountant books.

In the field of land property, the Government has created the Bureau for The Formalisation of the Informal Property – COFOPRI as public decentralised entity in charge of designing and enforcing (in an integral, comprehensive and fast way) a program for the formalisation of land property (land possession in state land property) and their permanence in the formality. In fact, is not only important to grant titles of property to the precarious holders as COFOPRI has done in the last years, but additionally it should be established necessary mechanisms in order to avoid formalised real states go back to informality. For instance, many programs in Africa for grating titles have been fruitless because new owners started to informally buy and transfer real states, because costs for transfer mean almost 10% of the value of the property and it takes ninety (90) days to get the registration. Besides that, the register publicity system

[18] QUIJANO, Aníbal. *Notas sobre el concepto de marginalidad social*. CEPAL, Santiago of Chile, 1996. Quoted by Department of Economic Studies of Indecopi. Op. Cit.

granted little security to the property[19]. The policy of formalisation allows as a first step to access to the legal property but it also makes possible that many people can register an asset that permit to register and organise companies which can obtain loans from financial institutions.

In the labour market, the Government has passed the Law 28015, Law for the Promotion and Formalisation of Micro and Small Business, which seeks formalising this kind of enterprises by establishing a Special Labour Regime, which in principle has an objective to reduce some labour costs, the number of paid vacations, the value of indemnity for arbitrary firing, etc. The following table shows a comparison between the Special Labour Regime and The General Labour Regime:

Table 8. Table N 3

REFERENCE	GENERAL REGIME	SPECIAL REGIME
REMUNERATION	S/. 500.00	S/. 500.00
WORKING DAY	8 daily hours or 48 hours weekly	Same
WORKING AT EVENING	Minimum Vital Remuneration + extra 35%. Form remuneration over S/. 675 the extra is not applied.	If it were habitual, it would not be applied.
DAY OFFS AND HOLYDAYS	24 hours and payment for overtime.	Same
VACATIONS	30 days, reduction to 15 days for "buying of vacations".	15 days, reduction to 7 days.
ARBITRARY FIRING	1 and 1/2 remuneration per working year. Limit of 12 remunerations. Fractions are paid in twelfth and thirtieth.	2 remunerations per working year. Limit 6 remunerations. Fractions are paid in twelfth.
SPECIAL INDEMNITY	2 remunerations per year. Fractions are paid in twelfth and thirtieth This is only for workers of the General Regime that are retired and replaced for workers of the Special Labour Regime (article 57 of Law 28015).	This is not.
SOCIAL SECURITY	Worker is a regular	Worker and manager are regular.
PENSIONS	The workers decide the pension system.	Worker and manager additionally decide if they pay to pension system.

Source and production: Dirección Nacional de la Micro y Pequeña Empresa (http://www.mypeperu.gob.pe/reglab.php?dn=5)

Taking as a base the Minimum Vital Remuneration, the new Special Labour Regime will mean a saving of costs for micro business, such as it could be observed in the following table:

[19] Doing Business (2009). Country Profile for Peru. In: http://www.doingbusiness.org/Documents/CountryProfiles/PER.pdf (searched in January 27, 2009).

Table 9. Table N 4

Issue	General Labour Regime		Special Labour Regime S/. Month	
Minimum Vital Remuneration		500.00		500.00
Familiar Assignation		50.00		
Gratification July & December	(1/12)	91.66		
CTS 8.33 %	(1/12)	53.47		
Vacations	(1/12)	45.83	(1/24)	20.83
Social Security 9%		61.87		43.87
TOTAL		802.83		567.70

Finally, in the field of administrative simplification of bureaucratic procedures, the Government has made advances by passing the following regulations:

- The Law of General Administrative Procedures – Law 27444 – which stipulates the following: (i) the principle of simplicity as an authority's duty to establish easy proceedings and ask only for rational and proportional requirements; (ii) the obligation for passing a Unique Text of the Administrative Proceeding which contents all the proceedings before an entity; (iii) a proceeding of automatic approving subject to post supervision; (iv) a prohibition of requiring some determined documents such as one that the entity already obtained in a precedent proceeding; (v) the establishment of a limit for fixing fees of the proceedings that can not be superior to the real costs of the service.

- The Law of the Administrative Silence – Law 29060 – establishes a regime of positive administrative silence for:

    1. requirements in order to exercise pre-existing rights or develop economic activities that require previous authorisation from the Administration, subject to that public interests are not negative affected (e.g. public health, environment, natural resources, public safety, etc.)

    2. appeal for questioning the denying of a request or administrative acts, unless the cases described before; and

    3. proceeding in which the significance of the final decision does not have an impact on third parties.

6. Informality, consumer protection, competition defence and protection of intellectual property

As it was appointed, Indecopi, as competition authority, acts in its role of arbitrator and promoter of the free market economy model, helping to correct the market failures (by *ex post* and *ex ante* intervention) that are able to restrict the functioning of the competitive process.

In that sense, in the following sections it will be analysed how Indecopi intervene in the markets from the perspective of its respective functions, keeping in mind the premise that both the formal agents and informal ones are under the scope of Indecopi's competences.

Consumer Protection

According to the Legislative Decree 716 – Protection of Consumer Act, a consumer is

> a *natural person that, in acquiring, using and enjoying a good or contracting a service, acts in a field different to a professional and business activity; and, exceptionally, a micro enterprise that shows a situation of asymmetry of information with respect of its provider related to services and products not concerning with its object of business.*

In that sense, the problems related to the commercial relations established by the consumer with the providers (retailers) are focused on information asymmetries and, consequently, lack of suitability of the product. Indeed, in a consumption relation, the provider of a specific product has major and better information about its qualities and characteristics, and if that product is suitable in order to satisfy the consumer's expectations. Through many modalities, the provider can hide relevant information to consumers, so it can produce a risk that sub-optimum commercial relations appear in the market, which would not have existed with adequate information. The inefficient result of this kind of transactions means that consumers will not allocate their limited resources for a better value in order to satisfy their unlimited needs.

As it can be inferred, the central issue is to form well-informed consumers and providers that believe in the advantage of acting with correction in the market by following the rules of loyal and free competition. This becomes particularly difficult if it is taken into account that there are a group of activities and agents that act in the informal sector; however, this does not mean that Indecopi does have competence to resolve conflicts arising from informal consumptions relations or on the fringes of the institutional (which does not include criminal offences).

Nonetheless, the Indecopi's main difficulty to solve conflicts derived from no formal transactions lies on proving the consumption relationship. In those transactions generally a proof of payment or any other document is not issued, so consumers are not able to prove they contracted a service or acquired a good from an specific supplier (even when it is informal). In general, these kind of transactions are closed by word or based in confidence when there have been previous operations.

Finally, it is important to point at the case of informal transactions, which consumers generally have the capacity to know about the risks derived from them, and even so, those consumers decide to assume them because of the lower price. Under this concept, the consumer could assume that any intention of complaining before Indecopi could be more burdensome in terms of money and time in comparison with the price that has paid for the good or service.

Defence of Free Competition

When there are cases that affect the competitive process through conducts of abuse of dominance and collusive practices, the competition authority will investigate and, eventually, punish, independently if the accused economic agent has activities in the formal or informal sector.

It is important to mention, as we did before, that an informal firm does not take advantage of scale economies because it precisely attempts to stay small in order to avoid of being detected and punished. Therefore, it is unlikely to observe in the market an informal agent that has dominance position. In the same way, because of the size of informal firms and the magnitude of their transactions, it is unlikely the incentive to engage in a collusive practice.

However, it is a paradox that in some cases it is possible to observe the presence of informal firms that have discouraged and made it failed the execution of anticompetitive conducts.

Indeed, in a case between the *Chamber of Commerce of Lima vs. the Transporters Owners of Trucks Union* (UNT Peru) and other trade transportation groups. The Technical Secretariat of the Commission observed that in the market of inter-cities transportation of persons and cargo was unlikely the existence of a collusion by the imputed formal transportation enterprises, because fixing a high concerted formal price would be discouraged by the lower informal price.

Therefore, there was a significant presence of informal suppliers so the formal ones would have the following options:

a) To try to establish collusive agreements and mechanism of supervision including everybody or the great majority of providers (informal or formal);

b) If the previous option is not possible because of the intervention of the Administration or the high presence of informal, the formal agents resort to make lobby between the authorities looking for a protectionist regulation.

c) If the previous option is not possible because the intervention of the Administration is declared unconstitutional by the Constitutional Tribunal or another reason, then it will be more beneficial for the formal agents moving to informal sector.

As it could be inferred, the markets with a significant presence of informal agents are those where generally, the barriers to entry are low and the supply side is atomised. Therefore, the Competition Authority should not worry about monitoring these markets since it is unlikely the existence of anticompetitive conducts.

Finally, it is important to appoint that we could not deny the importance of informal sector inside the market economy in Peru. In that sense, when a specific anticompetitive conduct is analysed, the authority of competition should not leave out the presence of informal agents, first, when it determines the relevant market and, consequently, the market power that let them cause a major injury for the general economic interest.

Supervision of the Loyal Competition

The special Commission is in charge of enforcing the Law of Repression of Disloyal Competition – Legislative Decree 1044 – that punishes the business and trading practices (including those from advertising activities) against the good faith that has to guide the free competition in the competitive markets.

As in the last section, the Commission has competence to resolve cases of disloyal competition, independently if the parts execute activities in the informal sector.

A conduct that is punished under this Act is the modality described in the article 14 of the Legislative Decree 1044 that refers to *the acts in violation of law*. This modality of act of disloyal competition punishes to the economic agents that gain a competitive advantage by breaking any imperative regulation; for instance, a specific rule that orders to obtain a certification to operate. Therefore, this supposition is directly applied to the economic agents that act in the informal sector and by virtue of that, they obtain a competitive advantage.

The repression of conducts of disloyal competition in the modality of *acts in violation of law* helps to discourage informality since competitors injured with that conduct are able to bring charges against the offender. And, it discourages that injured competitors reply by breaking the law, too.

In 2005, a case involved enterprises of GLP (LPG) commercialisation in cylinders. The Tribunal of Indecopi punished to Alfa Gas because it obtained an anticompetitive advantage breaking the Regulation for GLP Commercialisation, passed by Supreme Decree 01-94- EM. In this case, the regulation established that enterprises of GLP commercialisation were banned of trading their own products using the cylinders that belong to their competitors, unless that (i) they have subscribed an agreement of "co-responsibility" and (ii) the agreement have been put into knowledge of the Minister of Energy and Mines. In this case, it was proved that Alfa Gas would be using the distinctive cylinders of its competitors for the commercialisation of its own product.

Supervision of Dumping

A Commission is in charge of correcting distortions on competition because of importation with a price under dumping. If national producers considered that are injured with the importation of similar products with dumping prices, they could ask the Commission for an evaluation of the market in order to determine the existence of the practice and a damage that causes to national production, and then, to impose *antidumping* rights.

By means of the action of the Commission, it could be avoided that the national producers has the incentive to operate part of their activities in a no-formal way, in other words, breaking labour, environmental, tax regulations in order to reduce their productions costs and, doing so, to be able to compete with the low prices of the imported products.

By the imposition of *antidumping* rights, the imported products will enter to the country in the same competitive conditions than goods produced in Peru by formal enterprises.

Elimination of Bureaucratic Barriers

There is a Commission which is in charge of monitoring acts and dispositions issued by the Public Administration that do not constitute an illegal barrier or an irrational barrier to the access or permanence in the market for private agents. These barriers are related to the demand of requirements and charging; or impediments and limitations to the performance of the economic agents.

In that sense, it is evident the importance of the functions of the Commission for the purpose of removing bureaucratic barriers that are able to constitute an obstacle for making the economic agents get into the market.

For example, there is a study about Rates of Access to Market 2007 – 2008 elaborated by the Technical Secretariat of the Commission and the Department of Economic Studies of Indecopi. In this study, it was observed that in relation to the passing of a TUPA only the 50% of a group of local governments had accomplished all the legal obligations related to this administrative tool (the first place was obtained by the Municipality of Callao).

Likewise, it was observed that 58.3% of the local governments fulfilled with creating the proceeding for the license of operation by issuing a municipal regulation, as it is established in the Law 27444. However, it was verified that the 70.8% of them had included that proceeding in their TUPA's. This means that 12.5% municipalities had not fulfilled with creating that proceeding according to law, but they had included it anyway. Finally, the 47.9% of the municipalities approved the tax for the right of licence proceeding by issuing a regulation; however, the 75% of them had already included in their TUPA's which means that 27.1% had included that tax without having approved it according to law.

To summarise, through resolving and monitoring actions, the Commission has taken care that the costs of access and permanence in the formal sector do not increase by actions of the Public

Administration. In that sense, it has to be more beneficial for economic agents to keep themselves in the formality.

Intellectual property and informality

Indecopi has three (3) Directions of Intellectual Property: (i) The Direction of Distinctive Signs; (ii) The Direction of Investigation and New Technologies; and (iii) The Direction of Author Rights.

In the Peruvian market, it is possible to observe that a high number of no-formal transactions are related to the infringing of Author Rights, mostly, by reproduction of DVDs and CDs in audio and video called "pirate products".

For instance, in the following table it is possible to observe statistics estimations of piracy made by Department of Economic Studies of Indecopi in the report called "The phonographic industry and piracy in the Peruvian Market: 1999 – 2003":

Table 10. Table Nº 4

AÑO	CD (Unidades)			KCT (Unidades)			INDICE DE PIRATERIA		
	Mb	V	d	Mb	V	d	Indice (c=0%)	Indice (c=5%)	Indice (c=15%)
1999	2 379 508	3 348 532	n/d	33 589 211	233 362	n/d	90,94	90,51	89,51
2000	6 857 776	1 504 871	858 236	13 594 973	451 788	1 066 563	90,45	89,95	88,77
2001	22 933 180	2 366 828	2 296 305	25 013 987	203 447	226 436	94,64	94,36	93,70
2002	50 849 262	886 549	1 635 386	18 935 802	64 400	148 434	98,18	98,08	97,85
2003	81 995 398	826 606	2 523 586	13 315 538	18 267	127 180	98,72	98,65	98,48

Made by Department of Economic Studies of Indecopi

Where: "Mb" represents the total imports of CD's and/or cassettes unrecorded; "V" represents legal sales of CD's and/or cassettes which recorded in the national market; "d" represents the total of confiscated stuff by the authorities; "c" represents the percentage of unrecorded CD's that were used to carry out reproductions different to musical purposes. In that sense, it can be inferred from previous data that by 2003 it existed a level of piracy between 98.5% and 98.7%.

The Direction of Author Rights is in permanent work in order to reduce commercialisation of informal audio and video pirate copies. Thus, during 2004, that Direction executed almost 40 operations in different places where pirate products were sold illegally for an amount of US$ 21 million.

However, the task for eliminating the informality in this sector goes on, but it is complicated because the network of production and distribution of this illegal business has high levels of sophistication, so they are able to reach a great mass of consumers. This has motivated that formal Peruvian enterprises use the same ways of distribution in order to spread their "original" products to a lower price so they can attract part of the consumers of piracy.

Finally, it is important to stress on the efforts of Indecopi in fostering some campaigns which have had the objective of catching the consumer's interest about damage of piracy in authors and the State. Examples of these campaigns are "Antipiracy Crusade" and "The Movie Theater Day".

ROMANIA

1. Definition of informal economy

Most authors trying to measure the informal economy (or underground economy) face the difficulty of how to define it. One commonly used working definition is: "all currently unregistered economic activities which contribute to the officially calculated (or observed) Gross National Product".

These very diverse sectors and kinds of informal economies in Romania can be grouped in four types (R. Neef, 2004):

a) **Informal dependent activities**. The people and households involved in such activities live in poverty, engage in informal activities - mostly subsistence farming and occasional labour, day work, transport or construction, but also some small handicrafts or street trading - and their main source of income is survival- level.

b) **Informal supplementary activities**. These activities are far less obvious, but are part of the strategies applied by the population as far back as the time of the "shortage economy". They are informal supplementary activities, practiced within households that are not poor, in order to complement their formal incomes, or improve their standard of living. The activities in this category are much more numerous than those in the first category. These include farming and the sale of products thereof, qualified trades, professional services and temporary work abroad. Most of these households have at least one formal jobholder, some using for personal gain the resources at their place of employment, such as materials, equipment, working time, infrastructure, or clients. Few of these benefit from stable social transfers, in most cases pensions. They receive supplementary income from agriculture (or land they own), qualified trades or even small businesses.

c) **Informal enterprises**. Most of the people in this group lack adequate material and financial capital, and are therefore unable to officially start up a business. They are mostly active in labour-intense industries, such as trade, professional services (computer operation, accounting, tutoring) etc. Most of these are family businesses, and the formal jobholders in the household provide the basic liquidity for the firm. A great deal of energy and time at work is the substitute for little capital. Others, to our knowledge, a minority, have available basic assets and property, excellent qualifications and a network of well-placed relations. They know "who needs to be known" to establish modern farms, transportation companies, micro- construction or specialised production companies. There is no data on these small, informal enterprises (evading taxes and using unregistered workers) to allow for a quantitative or typological estimation. The line between informal enterprises and formal ones engaging in a limited number of informal practices fluctuates and is impossible to approximate. It is more a difference of intensity than one of form.

d) **Criminal economic activities**. They are active in the most diverse fields and have a variety of forms, (these include theft, drug producing and dealing, and finance criminality). Some are just distributive, tapping resources from the economy. Others manufacture illegal products or use illegal distribution chains. Their profits do not depend on the number of working hours spent or on their own accumulation, but rather on risk-taking, blackmail or violence. Illegality is the core

of criminal economic activity, and constitutes its difference from other types of informal economies that may include many illegal elements or manipulations, but which be put aside if other legal resources were substituted.

2. Causes, characteristics and size

The informal sector is a critical component of many economies in Eastern Europe, considered by some as the "shock absorber of transition". The economic, social and political re-engineering which characterises transition to a market economy and western style democracy creates many uncertainties as well as many opportunities; a large part of this process has actually happened outside of official channels through informal relations and activities.

In this context, many problems emerge, since it is widely believed that high tax rates and ineffective tax collection by the government are the main causes contributing to the rise of the underground economy. The economists have already established a relationship between tax rates and the amount of tax evasion or the size of the underground economy: the higher the level of taxation, the greater the incentive to participate in underground economic activities and escape taxes. However, corruption is an important factor that can not be neglected. Moral issues, related to the fairness and the asymmetry of the relationship between the individual and the State, and structural flaws in the legislation are also considered as catalysts for economic fraud.

General wisdom says that the sectors in which underground activities mainly occur are: repair and maintenance of vehicles and domestic appliances; clothing and footwear production (including repairs); construction; agriculture; transport; wholesale and retail trade; tourism, hotels and restaurants; real estate; education; health; business and personal services.

At the macroeconomic level there are several so-called indirect methods used to estimate the size and dynamics of the underground economy, reported in literature as "Monetary Approach", "Implicit Labor Supply Method", "National Accountancy", "Energy Consumption Method", etc. Unfortunately, many times there are large differences among the estimated shares of informal or underground economy obtained by various methods. For instance, a study published by L. Albu[1] shows that: "the figures range between about 20% of GDP, obtained on the basis of the energy consumption method (Enste and Schneider, 2000) and more than 45% computed using the monetary approach (French, Balaita, and Ticsa, 1999). Also, the figures (based on the national accounts methodology) reported by the National Institute for Statistics (NIS) increased (mainly due to changes in methodology); from about 5% in 1992, to 18% in 1997 and to 20-21% in 2000-2001. Adding to these figures about 7% of GDP, representing the estimated average level of self-consumption in the case of a rural household, legally non-registered but informal, it results that during the last years the informal economy accounted for 25 - 28% of the national economy".

Many transition economies have experienced a surging business activity in the informal sector. Some of this activity is illegal (criminal), for example arms trafficking. Such activity will not become formal, regardless of improvements in the business climate. Other activities, like mom-and-pop retail trade or small production units operate merely for the subsistence of their owners and do not generate enough revenue to make their inclusion in the tax base meaningful. However, there exists a considerable share of business activity that is semiformal, e.g., the company is registered but most employees are not etc.

[1] "*A Model to Estimate Informal Economy at Regional Level: Theoretical and Empirical Investigation*" - Lucian-Liviu Albu, Institute for Economic Forecasting, Romanian Academy, Paper prepared for the International Conference on Regional and Urban Modeling, Free University of Brussels, June 1-2, 2007

Unofficial enterprises can be medium or even large enterprises with sophisticated activities. This happens because an enterprise is able to keep activities 'blended' i.e. part formal and part informal or unofficial.

Businesses in the subsistence end of the informal sector spectrum hold little potential for "graduating" to the next levels. Business failure rates are high because of high localised competition and lack of information or access to other markets. Moreover, many of these enterprises are short-lived until the household finds other sources of income that enables it to recover or surpass its living standards.

Unofficial enterprises in the small and medium end of the informal sector whose owners and employees are highly educated and have sophisticated skills hold the greatest potential to 'breakthrough' to the formal sector. This sub-sector is where there is a great deal of mixed activity, enterprises that may be formally registered, but some of their activities or employees are not officially reported. Improvements to the business and regulatory environment may provide incentives for these potentially dynamic enterprises to go formal. However, many authors believe that such businesses structure their supply and customer relationships in ways that make it difficult to go "legal" later; also opportunities to modernise are often dismissed and productivity of informal companies stays below half the average of legitimate companies.

3. Level playing field and productivity

The expansion of the underground economy relative to GDP has important consequences for public finances. Businesses in the underground economy escape taxation, so that the transfer of scarce resources to the underground economy undermines the tax collection and consequently reduces the supply of essential public goods, such as macroeconomic stability, public order or law enforcement. Furthermore, a vicious cycle may emerge since budgetary concerns generated by low tax collections may generate increased tax rates imposed on formal businesses. In addition to exaggerating the unearned cost advantage of informal ones, higher taxes eat up revenues that formal companies would otherwise invest in R&D.

Informality stifles economic growth and productivity in two ways. First, the powerful incentives and dynamics that tie companies to the grey economy keep them subscale and unproductive. Second, the cost advantages of avoiding taxes and regulations help informal companies take market shares from bigger, more productive formal competitors.

In many sectors of the economy entire informal value chains have a substantial cost advantage over their formal counterparts. In addition, customers of an informal business expect low prices, and many would go elsewhere if it transformed itself into a formal company and had to raise them.

4. Competition enforcement

A sector where the Competition Council was very recently faced with a substantial underground economy is the cereals market and its downstream markets.

In 2007, upon receiving signals from the market and the press, the Competition Council opened an ex-officio investigation on the general bakery market regarding potential price agreements between producers. Subsequently, RCC opened a sectoral enquiry on the upstream market, respectively on the market of cereals used for the production of general bakery products. Both actions are still ongoing, although in their final stages of completion.

The analysis of both markets revealed a high percentage of underground activity. In the first investigation, even if formal players interviewed accused large portions of the market being affected by informal players, evidence showed that the informal players were small operators, in villages and the peripheral area of small cities. Difficulties in the assessment of the market and market shares of formal

players, affected by lack of figures from the informal side, were not detrimental to the case since RCC was investigating a per se infringement. The large number of small informal operators, though, has a large influence on the price of bread.

Apparently such operators are part of an informal distribution chain, so cost advantages that create pressures on formal competitors result not only from tax evasion, but also from lower costs in raw materials, storage etc.

Data from the sectoral enquiry on the market of cereals used as raw material in the market of the initial investigation confirmed the spillover effect of underground activity in all downstream markets onto the final product market, affecting the behaviour and pricing policy of formal bread producers.

Most of the bread producers declared that they are forced to keep their profit margins very low to stay on the market. Oddly enough, the ordinary bread consumer may find an apparent positive aspect of the pressure of the underground economy on the formal one: without the tax evaders, the price of bread would soar.

However, for the more trained eye, large bread producers do not seem to be in any threat of exiting the market. Bread is a basic food product and therefore demand for bread is highly inelastic. Moreover, the lack in sophistication of the customers and low level of income per capita of the Romanian general population as opposed to more developed economies may mean that an increase in prices for bread would paradoxically generate an increase in the quantity demanded (the Giffen effect). The size of the informal bread producers makes it impossible to believe a scenario where consumers, especially those from the big cities where most of the bread produced in large factories is distributed, would shift their buying habits so much as to travel large distances to seek for cheaper bread.

Baking is not a capital intensive industry. It manufactures generally low-cost goods from product components. It is however true that a low profit margin will keep companies from investing in quality improvements or brand diversification and thus generate cost efficiencies that would make them more competitive on the market.

Evaluating the size of the informal economy in the grain market proved to be an almost impossible task, since statistical data available from various institutions was incompatible due to different methods of estimation. The mechanism for granting subsidies for agriculture could have provided also a good approximation of internal production of grain; however, certain subsidy beneficiaries tend to declare fictitious figures for their production, accusing unfavourable weather for low levels of productivity and selling the undeclared grains on the black market. Also, according to information received, large quantities of cereals were imported and exported illegally. Players on the market placed the size of the "black market" at 40%.

Financial Guard controls on these markets revealed losses for the State budget of almost 21 million EUR only from bread producers investigated in 2007. 8 out of 10 undertakings investigated were evading taxes. Total figures for tax evasion from all markets using cereals are impossible to estimate.

The Competition Council will communicate the findings of the investigation reports to the relevant authorities that have the necessary tools to get these markets back to a certain degree of normality.

5. Advocacy

All types of informal activities have something in common: the entrepreneurs who pursue them believe the benefits of informality outweigh their costs. Some activities will always stay informal: illegal activities like drug trafficking is one example; house-cleaning is another example. No improvement in the

regulatory environment will change their status. Fortunately, such activities account for a small share of GDP. Many activities that now take place in the informal or semi-formal economy may be legalised if the costs of staying informal would rise and its benefits would fall.

Several changes need to take place in order to improve the environment for operating a formal business.

- Reducing barriers to entry on markets.
- Streamlining administrative process.
- Adequate fiscal policy, assisted by efficient tax collection and control instruments/organisms.
- Eradicating corruption.
- Enhancing access to capital.

Most of these actions are beyond the attributions and mission of the competition authority, but rather fall under the responsibility of other governmental institutions.

Advocating removal of excessive regulations that create high barriers to entry is however a task that a competition authority can and should perform in order to promote and preserve free competition on the markets.

A good example on this topic is the taxi services market. Although the case was extensively presented in a previous submission of the Romanian Competition Council for OECD's Competition Committee Roundtable on taxi services in 2007[2], recent and relevant evolutions justify an additional brief presentation.

Until 2002, in Romania taxi services were regulated at local level by each local public authority, by means of decisions of the local councils. At the end of 2002, the Parliament adopted a law regarding taxi and for-hire services; this law established the general rules of functioning for these services, enforced at national level. Local authorities were now empowered both to define the dimension of the market by establishing a maximum number of licenses and to issue regulations regarding minimum and maximum tariffs for taxi services. Moreover, these decisions were to be made upon consulting the respective professional associations.

RCC led a sustained advocacy activity, informing the Government, the Parliament and the General Council of Bucharest about the anti-competitive aspects in the law and proposing[3] their elimination. Our position was also presented publicly, in several articles, press releases and interviews in the mass-media, underlying each time the negative effects of the restrictions existing in the taxi law.

Discussions took place also with the professional associations in the field and with the legislators for finding less harmful solutions from the competition standpoint. RCC insisted on eliminating minimum tariffs and refraining from consulting the professional associations on tariffs and number of licenses.

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2 See OECD Policy Roundtables - "Taxi services: Competition and Regulation" - pg.222 Romania, http://www.oecd.org/dataoecd/49/27/41472612.pdf, or on OLIS, DAF/COMP(2007)42

3 The competition law in Romania allows the competition authority to propose modifications of the normative acts which contain provisions with an anti-competitive effect

Regarding the limitation imposed to the number of licenses, it was suggested that the limitation should be eliminated in two years time, in order to give stakeholders the possibility to adapt/ prepare themselves to face up to the competition on a free market, without such entry barriers. If necessary, such limitation might only be maintained in big cities where heavy traffic might justify it; as soon as traffic issues are addressed, this limitation should be also eliminated. This opinion was upheld by local authorities in small towns that considered limiting the number of licenses not justified.

Several draft laws regulating the taxi services that incorporated our comments were submitted to the Commissions of the Parliament and extensively debated. In 2007, the Romanian legislator issued a new law regarding local public transportation, which included taxi and for-hire services. The new law contained several provisions that were supposed and may have been indeed a disincentive for the informal economy in the sector and most certainly contributed to the welfare of the consumers.

However the restriction regarding the maximum number of licenses was maintained along with other anticompetitive provisions that are not relevant for this topic.

At present a maximum number of four authorisations per 1,000 people are issued. Taxi licenses are assigned for a five years period, with a possibility of renewal.

For example, before this restriction was introduced, in Bucharest there were about 7,000 taxi authorisations. Their number increased in 2004 to 8,500 and at present there are 10,000 authorisations. Although remarks were made at the previous debate on this issue that taxi services in Bucharest seem to be quite competitive and the quality of services beneficial for the customers, and with good reason, signals from the market show that the limitation imposed on licenses, aided by other secondary factors not necessary related to regulation, such as corruption, mentality and social issues, led to the proliferation of a quite substantial informal market.

According to the testimonials, big taxi companies currently do not have staff to operate their licensed vehicles, due to low salaries and high daily targets imposed. However, they keep their current licenses and would rather keep cars parked in company parking lots than downsizing business to increase productivity. As a result, even if on paper 10,000 taxis operate within city limits, in reality figures are significantly lower. The local council has more than 1500 applications for licenses on the waiting list, and in the meantime most of the applicants are forced to operate illegally.

The professional associations on the market right now are divided in two sides: big companies on one side and small or independent operators on the other side, most of them currently without licenses. The first declare themselves quite satisfied with the current state of regulations and are quite eager to participate in consultations on tariffs. The latter accuse the first of closing the market. Even if one might argue that a substantial presence of big operators on the market is not necessarily a bad thing for the quality and safety of services, since obviously big companies have the necessary resources to observe quality and safety regulations, there is always a concern related to prices. An absence of small and independent operators on the market might provide breeding grounds for concerted practices. Moreover, the resulting oligopoly is artificial and not the result of normal competition.

Currently, RCC has several ongoing investigations on local taxi markets regarding possible price agreements.

Social movements and public protests of taxi drivers occurred repeatedly in recent months: public rallies and demonstrations, hunger strikes, open letters to the regulators and the Government, even a letter to the European Parliament. The Mayor of Bucharest had several meetings with representatives of discontented taxi drivers and agreed to try to increase the limit of maximum licenses. This solution would provide however only temporary relief.

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CHINESE TAIPEI

1. Introduction

1. According to Article 2 of the Fair Trade Law of Chinese Taipei (hereinafter the "Law"), the Law is applied to a company, a sole proprietorship or partnership, a trade association, and any other person or organisation engaging in transactions through the provision of goods or services. Therefore, almost all kinds of undertakings, regardless of whether they are natural persons, small-sized stores and vendors, different types of companies, or trade associations carrying out formal or informal economic activities will be under the jurisdiction of competition enforcement.

2. However, defining the informal economy and identifying data sources are difficult tasks because of varying degrees of non-compliance. The Directorate General of Budget, Accounting and Statistics (hereinafter the "DGBAS"), a Cabinet-level office, which handles most of the duties of the national statistical reports used as reference for policy-making, has estimated the underground economic activities in 1992 and 1999, respectively. In the past research conducted by the DGBAS, all kinds of informal trading activities have referred to paid informal work. Paid informal work is composed of the following types of economic activities:

- illegal and unregistered activities, such as smuggling, unlawful lumbering, collecting river stones and sand without government approval;

- evasion of direct and indirect taxes from earnings, by mainly focusing on the work performed by the professions, such as those comprising lawyers, accountants, physicians, pharmacists, architects and performers;

- avoidance of taxes and regulations where the focus is on the production and sale of goods and services that are unregistered, or hidden from government regulations, such as goods and services supplied by street vendors, unregistered factories, loan clubs, tutors, nannies, and Japanese Pachinko parlours.

3. Different measures used to assess the ratio of the informal economic activities contributing to GNP give rise to different results. In spite of the lack of current official statistical data, in the 1990s, according to local academic research, the value of informal economic activities accounted for a share of some 20% to 30% of GNP. The ratio was even estimated as being as high as 47% in 1997 due to the hidden trade across the Taiwan Strait. Consequently, the figure of GNP was partly distorted. Some economists alleged that if the informal activities had been included in the national payments system, the value of GNP would have been higher. However, others have argued that considering that informal and formal players compete against each other in every sector in the economy, informality removes the incentive for businesses to improve their productivity, which means that it holds back GNP growth accordingly.

4. From the consumer's point of view, the supply of goods and services by the informal sector provides added variety, offers more competitive prices and brings convenience. Before the deregulation was implemented, including the opening of direct air and sea routes across the Strait, the opening of banks to China, and the loosening of restrictions on the number of Chinese tourists, Chinese Taipei shipped about

20% and 15% of its exports to China and Hong Kong, respectively, and most of the Hong Kong-bound exports were then transported to China. This illustrates that the cross-Strait economic activities were characterised by gray economic activities due to the strict regulations.

5. The existence of night markets in Chinese Taipei is another example that demonstrates that informality provides variety. A night market clustered with large numbers of street vendors providing assorted snacks, souvenirs and entertainment services is a combination of traditional culture and modern consumption, and has also gradually become a tourist attraction. On the other hand, luxury boutiques, department stores, and supermarkets may be many times as attractive as their informal rivals, and they may also offer higher quality. After all, the market variety provides consumers with opportunities to freely interact with both formal and informal businesses.

2. Examples of Fair Trade Commission Practices

Case I

6. A case currently under discussion, can demonstrate how government regulations that curb the informality affect the provision of services. The Children's Bureau under the Ministry of Interior (hereinafter the "CBI") is the competent agency responsible for child welfare services. To achieve its policy goal, the CBI has a vision to establish a community nanny-support system, to reinforce the training of nanny, and to build a professional image with nanny certification so as to upgrade the quality of nurseries.

7. The CBI has planned to implement a subsidisation project to improve professional babysitter practices and promote community nanny-support systems. According to its draft plan, every household sending a child to a nanny with both CBI certification and membership of the community nanny-support system will be able to apply to the local government for a subsidy of NTD3,000 per month (approximately US$100). Furthermore, in order to prevent nannies eligible for subsidies to collude accordingly on increasing pro rata their service charges, the CBI recommended that local governments set a maximum cap for the nanny services to ensure that the system will not be circumvented. Due to concerns that the price-cap recommendation may run against the Law, the CBI sent a letter to solicit the opinions of the Fair Trade Commission of Chinese Taipei (hereinafter the "Commission").

8. In the past, households could acquire child-care services by hiring experienced unlicensed nannies, college students or day-care centres, or by having free services provided by family members, such as grandparents. Although the number of babysitters with official certification has increased from 7,302 in 1998 to 37,610 since the CBI was established in 1999 and there are 41 community nanny-support systems organised by 23 local governments, nannies from the formal sector can not meet the demands of parents since the average number of children under the age of 6 is more than 300,000. The huge gap between demand and supply make the task of assessing the scale of the informal economy in the nanny service sector too difficult to develop a pro-competition policy.

9. Although the Women's Rights Council of the CBI insisted that formulating the maximum standard for the service charge was the only way parents could prevent nannies from exploiting the provision of the government cash subsidy for their own advantages and ensure the quality of the child-care services, the Commission advocated that the CBI implement other optional policies to achieve the same policy goals. The Commission tried to persuade the CBI to accept that the best way to ease the upward pressure on the price was to increase the provision of nanny services instead of setting the price cap. The Commission further suggested that the CBI avoid unnecessary or disproportionate restrictions on the provision of nanny services to avoid unexpected price rises due to collusion. This case is still under consultation by different government agencies.

Case II

10. The second case is concerned with how the government streamlines taxes and regulations to tackle the problems created by the informal sector. With the island of Taiwan located in the middle of a chain of islands stretching from Japan in the north to the Philippines in the south, and only 160 kilometres off the south eastern coast of the Chinese mainland, the fishery industry is one of the most important primary industries of Chinese Taipei due to its superior geographical location. Owing to the painstaking devotion of researchers as well as the diligence of the fishing entrepreneurs, Chinese Taipei's fishery industry has rapidly developed and has gained worldwide recognition. In recent years, its overall production has exceeded 1.3 million tons, with a total value of nearly NT$100 billion. Over 130,000 households, or approximately 340,000 people, are engaged in the work of the industry.

11. The Council of Agriculture (hereinafter the "COA") is the highest fishery policymaking body in Chinese Taipei, under which the Fishery Administration (hereinafter the "FA"), is established to be the highest fishery administrative agency. Fishermen's associations formed by fishermen operate for such purposes as safeguarding fishermen's rights and interests, enhancing fishermen's knowledge and skills, boosting the modernisation of the fishery industry, increasing fishing production, and improving the fishermen's livelihood. The FA has authorised the state as well as 39 local fishermen's associations to handle affairs regarding awards, aid and subsidies to encourage the industry.

12. In recognising that fuel costs account for as much as half the earnings from the boats themselves and cannot be passed on, the Chinese Taipei government has continued delivering funding support in relation to the fishing boats' fuel consumption since 1958. The CPC, which is a state-owned monopoly with overwhelming power in both the wholesale and retail petroleum markets, has offered preferential rates in respect of fishing fuel prices for any type of vessel registered in Chinese Taipei for the purposes of fishery operations. The CPC has submitted the applications for such subsidies to the FA to compensate for the difference between the wholesale price and the preferential price of the fuel.

13. In addition, according to Article 59 of the 1991 amendment to the Fisheries Act and Article 8 of the Value-added and Non-value-added Business Tax Act, fuel for powered equipment used in the fishery industry shall be exempted from commodity tax (approximately NT$3.8 per litter for diesel fuel, and NT$6.5 per litter for gasoline in 2000) and business tax. The 1991 amendment to the Fisheries Act further strengthens the regulation on subsidising fishing fuel consumption in order to maintain the fairness of the market, and such an amendment has required the Cabinet to set the operating standard for fishing fuel purchased at preferential prices. In practice, the FA has been continuously providing a 14% subsidy based on the wholesale price excluding taxes.

14. Since the petrochemical components of the fuel used for the purpose of powering the fishing boats are almost identical to those for diesel, the amount of the exemption together with the government subsidy have been giving fishermen financial inducements to sell the fuel to local gasoline stations so as to earn additional profits to that from fishing income. In particular with the fishing industry having been hard hit with the progressive increases in petroleum prices, the FA has made many efforts to raise the subsidy over the period from 2002 to 2007 in order to help the fishing industry adapt to the high fuel costs.

15. When global oil and commodity prices remained at high levels, domestic trading firms and unregistered oil firms that fully or partially evaded taxes, and product, labour, land and security regulations, took advantage of the special features of the diesel market. As the government has been continuously providing a 14% fishing fuel price subsidy to revitalise a sluggish fishing industry caused by a depletion of fishing resources, the excess fishing fuel, which is estimated to amount to 410,000 kiloliters a year, has been sold as diesel in domestic gasoline stations or informal oil firms for higher profits. These practices have not only directly affected the tax revenues of the government and wasted the government's

funding support, but they have also significantly affected the competition in the formal sector. The use of inferior gasoline or diesel will damage the engines of vehicles as well as increase the level of air pollution. In addition, as such practices are usually carried out using makeshift facilities such as storage tanks, they have posed a great threat to security and the environment. In order to prevent underground trading from undermining the well-intentioned subsidy to fisherman from the government subsidy, the FA gradually requested that fishermen equip fishing vessels with mileage tracking facilities so as to assess the real fuel consumption amount and prevent non-users from avoiding fuel taxes.

16. Unlikely the fishery administrative agency, the Commission has been more concerned with the inappropriate government regulations in the market. The petroleum and its related upstream and downstream product industries were highly regulated by the Ministry of Economic Affairs ("MOEA") until the ban on privately-owned gasoline stations was lifted in 1987 as the very first stage of deregulation. Subsequently, in June 1996 the market was opened up to applications for the establishment of new petroleum refineries and at that time the privately-owned petroleum refining company Formosa Petrochemical Corporation ("FPCC") was authorised to enter the market. After the promulgation of the Petroleum Management Law in October 2001, by removing the restrictions on the establishment of a petroleum refinery with a minimum capacity, the petroleum gasoline, diesel, fuel and related products market was free to be entered by any potential competitors.

17. However, the FPCC faced challenges as it sought to take part in the fishing fuel market. The FPCC in its report to the Commission pointed out that the FA had adopted a subsidy application procedure that differed from those used for fuel purchases from the CPC in 2003. The CPC filed the subsidy application form directly with the FA for its approval, while the FPCC was required to submit subsidy applications to the local government for purposes of government auditing so as to send the case to the FA for a final decision.

18. In the eyes of fishermen, buying fishing fuel from CPC-owned, CPC-franchised or private-owned petrol stations, or else fishermen's associations with fuel storage facilities are all good substitutes for each other. However, the said subsidy application procedure is likely to have made retailers reluctant to source their fuel from the FPCC since the period for collecting the preferential price compensation due to the government subsidy has been constantly delayed by the lengthy review process.

19. The FA asserted that according to Article 17(1) of the Regulations Governing the Allocation of Bunker Fuels: "Fishermen's associations acting as bunker fuel purchasing agents shall submit a detailed table of the previous month's bunker fuel purchases and deliveries, and the circumstances of those transactions, to the relevant county (city) or special municipality and central government competent authority for fisheries by the fifth day of the following month." Consequently, the FA has been able to require local governments to review the subsidy applications prior to its approval and the Fair Trade Law has not been applicable in such cases. Moreover, given that the CPC is a state enterprise supervised by the Commission of National Corporations under the MOEA and its budget allocations are subject to government budget auditing regulations, and the CPC has also been the sole fishing fuel wholesaler and retailer in the ports, to save on administrative costs, the FA ignored the review procedures of the local governments in regard to CPC subsidy applications in the past.

20. However, given the discrepancy in procedures for applying for fishing fuel subsidies, new entrants, who cannot offer as fair, or better, trading terms to compete with or substitute for the terms of the incumbent, will hardly survive. The Commission advocated that the FA take its suggestions into consideration in carrying out its fishing fuel subsidy processing operations in the interests of promoting fair competition in the domestic fishing fuel market so as to allow the new suppliers to enter the market when the domestic petroleum market was fully liberalised at the end of 2001.

21. On the one hand, the Commission has made efforts to streamline regulations to promote competition in the market with the informal sector; on the other hand, it has remained neutral on the issue of criminality in relation to informal activities. The following case will point out those criminal activities where the goods and services themselves are illegal.

22. When the volume of imported supply and domestic production as well as the domestic consumption and inventory according to the disclosure of Customs' data are compared, it is found that an annual total of approximately 400,000 kiloliters of various imported oil products were blended into gasoline or diesel to be sold in 2003.

23. As it is difficult to detect and thereby root out the underground transactions of such inferior gasoline and diesel fuel, the police with insufficient legal tools can only passively inspect suspected inferior supplies. This has resulted in illegal transactions of unqualified gasoline and related products facing little curtailment.

24. Although both the CPC and the FPCC have complained that the weak governance structures contributing to such an informal economy will distort market order, the quality of the products sold through legal channels is not necessarily always good. In 2007, a worker at a gas station sourcing gasoline and diesel from the CPC admitted that she took orders from her boss to mix the gasoline with methyl alcohol. The workers' confession prompted prosecutors and investigators to hunt for the owner of the gas station. Consequently, five executives of the state-run CPC, including its president and the CEO, were penalised with demerits for lax supervision of the operations of the gas station that had been selling oil products supplied by the CPC for many years. The MOEA announced the punishments for officials at its Energy Bureau, which is responsible for national energy policies. Unconfirmed reports show that the gas station owner purchased a shipment of 50,000 litters of methyl alcohol and mixed the chemical product with 500,000 litters of unleaded gasoline. This shipment alone could have filled up oil tanks and affected at least 30,000 vehicles. However, the Commission has seldom gotten involved in these issues. It seems clear that the Commission considered that the informal work covers only activities where the means do not comply with regulations but the end goods and services are legitimate.

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TUNISIA

1. Defining the informal economy

There are a number of controversial definitions of the informal economy, which involve such elements as firm size, whether an activity operates fairly or not, and its legality. But the informal economy may be defined as "all activities operating outside the channels and forms generally accepted under the standards prevailing in each country".

2. Reasons, characteristics and size

Development factors for the informal economy may be divided into a number of categories:

- **Level of economic development:** The informal sector's share of the overall economy is heavily dependent on the economy's level of development: as an economy develops, the risk of informal-sector expansion diminishes.

- **The country's economic and social policy:** Educational wastage and employment policy are conducive to an influx on the job market of unskilled young people attracted by the informal economy. In addition, a lack of suitable infrastructure, such as industrial parks and new business incubators, aggravates the development of this scourge.

- **Barriers to entry into the formal economy**: Difficulties involving prerequisites for exercising certain professions and securing loans, along with high investment costs, make the informal economy less costly and more attractive.

Which products and services are generally supplied by the informal sector?

The informal sector's scope of intervention is very broad, encompassing industry (construction, textiles, machinery, electrical engineering, etc.), trade, agriculture, crafts and services.

How big is the sector?

The informal sector began to expand in Tunisia in the 1980s with 365 000 informal businesses in operation. It accounts for:

- 15-20% of gross domestic product;

- 20% of trade;

- Value added estimated for 1997 at 5 541 million dinars (excluding the agricultural sector).

It should be pointed out that the statistics available on the informal sector are estimations. It is very difficult to get precise statistics on the informal economy, but what figures there are show that the sector's size in the Tunisian economy is relatively stable.

Does the informal economy affect competition in the formal sector?

The informal sector is generally made up of small entities having little capital and operating with primitive production methods and unskilled labour. Nevertheless, such firms may offer low prices that meet consumers' needs. They may therefore compete with the formal economy in some sectors (*e.g.* cosmetics and sanitary ware) – a situation that is opposed by industry, which is calling for the government to combat it.

The informal economy can also exert competitive pressure on the structured sector, spurring businesses to offer consumers products at affordable prices.

Do the formal and informal economies collaborate?

In some cases, businesses in the formal economy call on those in the informal economy to dispose of products that are substandard or past sell-by date, and even to subcontract certain tasks.

3. Enforcement of competition law

The scope of application of competition law encompasses all sectors and all business firms operating in the informal or formal economies, insofar as the enforcement of competition law is unrelated to conditions of legality or fairness. The authorities are required to judge behaviour irrespective of an operator's standing. But in practice, the competition authorities encounter difficulties identifying operators and their market shares, turnover, etc., and in finding proof and assessing the market impact of the practices in question.

4. Control of the informal sector

The competition authorities' objective is not to eliminate informal trade but rather to circumvent it, and to this end a number of measures have been taken:

- Bolstering legal and economic provisions:
  - Elimination of licensing, which was replaced by the imposition of specifications to facilitate integration of the informal sector;
  - Facilitation of loans to foster economic activity (Solidarity Bank);
  - Enactment of several laws consolidating the principle of freedom to exercise economic activities and integration into the formal sector.
- Regulatory mechanisms for technical controls of imported products and merchandise;
- Programme for upgrading distribution channels;
- Strengthening economic control measures:
  - Fight against counterfeiting;
  - Fight against the expansion, in time and space, of weekly markets;
  - Ban anarchistic geographic establishment of trading activities.

- Improving conditions for doing business:
  - Create dedicated areas for traders operating in the informal sector;
  - Organise weekly markets and establish rules and conditions for the creation and operation of such markets;
  - Assist participants in informal channels to become part of the organised sector (awareness-building campaigns, etc.);
  - Facilitate establishment in specially outfitted locations;
  - Institute a plan to modernise municipal markets (problems posed by anarchistic trade in public thoroughfares);
  - Set up mixed local boards (trade, interior) to oversee the progress of work in this area.

TUNISIE

1. Définition de l'économie informelle

Il y a plusieurs définitions controversées de l'économie informelle plusieurs éléments peuvent être pris en compte: la taille de l'entreprise, le caractère loyal ou déloyal, la légalité de l'activité. Mais on peut définir l'économie informelle comme étant « toutes les activités exercées en dehors des circuits et formes habituellement admis selon les normes en vigueur dans chaque pays ».

2. Raisons, caractéristiques et taille ?

Les facteurs de développement de l'économie informelle peuvent être regroupés en plusieurs catégories:

- **Niveau de développement de l'économie**: Le poids du secteur informel dépend beaucoup du degré de développement de l'économie, plus une économie est développé plus le risque de développement du secteur informel est réduit.

- **La politique économique et sociale du pays** : la déperdition scolaire ainsi que la politique de l'emploi favorisent l'arrivée sur le marché de l'emploi de jeunes non qualifiés qui seront attirés par le marché informel. Ainsi que l'absence de territoires aménagés (zones industrielles, pépinière …) contribue au développement de ce fléau.

- **Obstacles à l'accès de l'économie formelle** qui se manifeste par la difficulté des conditions d'exercice et d'accès aux crédits ainsi que des coûts d'investissement élevés ce qui rend l'économie informelle moins coûteuse et plus attrayante.

Quels sont les produits et les services généralement produits par le secteur informel :

Le champ d'intervention du secteur informel est très large touchant l'industrie (bâtiment, textile, mécanique, électrique…), le commerce, l'agriculture, l'artisanat et les services.

Quelle est la taille du secteur :

Le secteur informel en Tunisie a pris de l'importance à partir des années 80 avec 365 milles entreprises opérant dans le secteur informel. Il contribue à :

- 15 à 20% du produit intérieur brut,

- 20% du commerce

- une valeur ajoutée estimée en 1997 à 5.541 millions de dinars (à l'exclusion du secteur agricole).

Il est signaler que les statistiques disponibles sur l'économie informelle sont estimatives, il est très difficile d'avoir des statistiques exactes sur le secteur mais les chiffres montrent que sa taille dans l'économie tunisienne est plus ou mois stable.

Est-ce que l'économie informelle touche la concurrence dans le secteur formel :

Le secteur informel est généralement constitué de petites entités avec un capital réduit utilisant des méthodes de production primitive et un personnel non qualifié. Néanmoins, ces entreprises peuvent offrir des prix bas satisfaisant les besoins du consommateur. Pouvant ainsi concurrencer l'économie formelle dans certains secteurs (cosmétique et articles d'hygiène…) ce qui est contesté par le milieu professionnel qui demande l'intervention de l'administration pour lutter contre ce phénomène.

L'économie informelle peut aussi exercer une pression concurrentielle sur le secteur structuré stimulant les entreprises à offrir aux consommateurs des produits à des prix abordables.

Est-ce que l'économie formelle et informelle collabore ?

Parfois les entreprises de l'économie formelle font appel à celles de l'économie informelle pour écouler des produits non conformes aux normes ou périmés et même pour sous–traiter certaines taches

4. Application de la loi relative à la concurrence :

Le champ d'application de la loi sur la concurrence couvre tous les secteurs et toutes les entreprises opérant dans l'économie informelle ou formelle, l'application du droit de la concurrence n'est pas liée à des conditions de légalité ou de loyauté. Les autorités sont tenues de juger le comportement quelque soit le statut de l'opérateur. Mais dans la pratique les autorités de la concurrence trouvent des difficultés pour identifier les opérateurs, leur part de marché, leur chiffre d'affaires … ou les prouver ou de mesurer l'effet de cette pratique sur le marché.

5. Encadrement du secteur informel:

Bien que l'objectif des autorités de la concurrence n'est pas de faire disparaître le commerce informel mais il s'agit de le contourner, à cet effet plusieurs mesures ont été prises:

- Renforcement du dispositif juridique et économique :
  - suppression des autorisations et leurs remplacements par des cahiers des charges pour faciliter l' intégration du secteur informel
  - facilitation de l'octroi des prêts destinés à l'exercice de l'activité économique (Banque de Solidarité),
  - promulgation de plusieurs lois consolidant le principe de la liberté de l'exercice des activités économiques et l'intégration dans le secteur formel.
- Mécanismes réglementaires de contrôle technique à l'importation de produits et marchandises,
- Programme de mise à niveau des circuits de distribution.
- Renforcement des actions du contrôle économique :
  - lutte contre la contrefaçon,
  - lutte contre l'expansion géographique et temporelle des marchés hebdomadaires,

- interdiction de l'implantation commerciale anarchique.

- Amélioration des conditions de l'exercice du commerce :

  - Création d'espaces spécialisés pour les commerçants opérant dans le secteur informel,

  - Organisation des marchés hebdomadaires et fixation des règles et conditions de création et de fonctionnement de ces marchés,

  - Aider les intervenants dans les circuits informels à s'intégrer dans le secteur organisé (campagne de sensibilisation…),

  - Facilitation d'installation dans les espaces aménagés

  - Mise en place d'un plan de modernisation des marchés municipaux (problèmes posés par le commerce anarchique sur la voie publique),

  - Instauration de commissions locales mixtes (commerce, intérieur) chargées du suivi de l'avancement des travaux dans ce domaine.

UKRAINE

1. Definition of the informal economy

In Ukraine, the informal economy or, as it is usually called, "shadow economy," has been quite a severe problem since the second half of the 1990s to the beginning of 2000s.

At the same time, the informal economy in Ukrainian research works and governmental documents is understood as the economic activity, i.e. production and sale of goods performed outside the mechanisms of legal regulation and official monitoring. First of all, it consists in evasion of taxes and of going through the established licensing procedures for business start-up, as well as evasion of quality and product safety control, non-compliance with environmental requirements and the requirements concerning working conditions etc.

For the most part, informal economy exists in two major forms: functioning of non-legalised agents and part of the activity of legalised economic agents, which is performed outside the formal monitoring mechanisms and legal regulation.

2. Causes, characteristics, and extent

The emergence of fairly significant sector of informal (shadow) economy in Ukraine in the mid-1990s was caused, in our view, by two main groups of reasons.

Firstly, in the conditions of market transformation, a significant number of independent economic agents emerged, which for some time existed without completing the relevant legalisation procedures, because as a result of poor development of government regulation of market and lack of business experience, the market did not feel any benefits from such legalisation or any loss from its absence. Effects of the above-mentioned reasons were temporary and almost stopped in the second half of the 1990s.

Secondly, emergence and development of the informal (underground) economy is a reaction to excessive tax and regulatory pressure on the part of the state. For example, according to experts, in early 2000s, the share of net taxes in the legal sector amounted to 20.1 per cent of GDP, the level of budget and extra-budgetary funds revenue amounted to 44 per cent of the official GDP. However, with account of the informal sector, net taxes declined to 14.4 per cent, that is, became closer to that figure in the OECD countries, and the level of the budget and extra-budgetary funds revenue decreased to 31.4 percent of the aggregate GDP. [Крючкова І.В. Структурні чинники розвитку економіки України., Київ, 2004. стор 265].

Of the respondents surveyed in 2003 by the International Financial Corporation, 70 per cent characterised the administrative procedures necessary for obtaining permission for business start-up as difficult and very difficult, mentioning that to obtain such permissions, one must spend an average of 33 days and the equivalent of 115 euro (moreover, the third of those surveyed had to spend three years or more to get such permissions), 72 percent of those surveyed described the certification procedures as difficult and very difficult, 54 per cent described the registration procedures as such. [Бізнес-середовище в Україні 2005. Міжнародна фінансова корпорація. 2005 Стор.6].

According to the official data, the informal (shadow) economy reached its maximum size in 1997, when it amounted to 43.5 per cent of the legal economy, and decreased to 35 per cent in 2003 [Послання Президента України до Верховної Ради України. Про внутрішнє і зовнішнє становище України у 2003 році. Київ, 2004 Стор 7, 143]. According to expert estimations, in 2001, the ratio of total shadow output of products and services to the official output was no less than 30 per cent, the gross value added was no less than 57 per cent of the legal value added [Крючкова І.В. Структурні чинники розвитку економіки України, Київ, 2004, стор 265]. Official or expert data on estimates of the size of the informal sector of the Ukrainian economy within the period of 2004–2008 is unknown, but certain figures allow the assumption that there is a tendency to its reduction. For example, the number of industrial enterprises in Ukraine in 2003-2007 declined by 6 percent, while the financial result of industry increased (with account of inflation) by 2.89 times. Since substantial technology changes during that time did not take place, the above-mentioned increase occurred largely as a result of the legalisation of activities that previously had been carried out in the informal sector.

Functioning of informal (shadow) economic agents is primarily inherent to products and services markets where there are individual entrepreneurs or small number of partnerships, the activity of which is difficult to control for the government. Such markets are, in particular, retail trade, consumer services, certain kinds of agricultural production that do not require any special cultivation and processing technologies, certain categories of transport, some types of construction work, particularly civil construction, and the like. The informal (shadow) activity of legalised economic agents covers much broader range of economic activities.

According to the International Financial Corporation, in 2004, less than 20 per cent of the 3 thousand surveyed chief executives of companies in different economy branches confirmed that they did not hide their profit from tax authorities [Бізнес-середовище в Україні. 2005. Стор 29].

3. Level of markets and productivity

In the areas with a large number of informal economic agents, they were significant competitors of the legalised economic agents. However, conditions of competition in such areas have certain characteristics compared to the fully legalised sector. On the one hand, informal economic agents and economic agents who sell their products in the informal conditions do not incur certain expenses that their competitors incur in the legal sector. Although they also have specific costs associated with maintaining their informal status. However, these costs are lower compared to the cost of legalisation and taxation; otherwise the relevant economic agents would leave the informal sector. Consequently, in terms of the transaction costs, the economic agents of the informal sector have an advantage over competitors from the legal sector. At the same time, the condition of the informal sector functioning is information opacity (informal economic agents, informal economic activities seeking to "hide" from government control). As a result, competitors from formal and informal sectors are asymmetric in terms of information for the consumer, and this asymmetry creates advantages for the legal sector.

In addition, the specific conditions of the informal sector functioning, usually do not allow economic agents to use technological advantages and economies of scale.

Ultimately, as the government reduces tax and regulatory pressure, the advantages of legal sector become more substantial, thus reducing the informal sector.

In the practice of the Antimonopoly Committee of Ukraine, there is no data that would clearly indicate that the informal sectors generated any significant barriers for legal companies, including foreign ones, to enter commodity markets.

However, in conditions of the transformational crisis of 1994-1999, the existence of the informal sector contributed to satisfaction of consumer demand, especially of the disadvantaged groups, which had little opportunity to purchase goods from economic agents of the legal sector.

4. Application of the competition law

Direct application of the laws on protection of economic competition on the relations that arise in the informal economy is not possible. Business processes that occur in the informal economy could become the subject of regulation of competition law only if legalised. For example, if during an investigation of unfair competition, facts of misuse of someone else's business reputation by an informal economic agent are revealed, this agent may be held liable only if legalised.

Similarly, for example, a statement of certain business entities that they are experiencing significant competition from the informal economic agents could have legal consequences only if the existence of these economic agents is proven using the formal legal mechanisms of monitoring and government control. But in this case, the relevant economic agents no longer belong to the informal sector. If there is no evidence, no allegations of existence of competitors in the informal sector can be taken into consideration. At the same time, since the existence of informal competition can only increase the market size and reduce the actual market shares of separate legal entities, non-consideration of such competitors may not lead to a lack of competition or insufficient resistance to the abuse of market power.

5. Facilitation of legalisation of the informal sector

The legalisation of the informal sector can be done in two ways: restrictive and encouraging. Restrictive method consists in creating so much risk for the informal economic agents (in case of their identification) that these risks would prevail over the benefits they have operating outside the formal monitoring mechanism and government regulation. Restrictive activities include the removal of legal business methods (such as barter payments) that reduce the transparency of economic processes and create conditions to avoid formal monitoring and regulation. The promotional method lies in reducing regulatory and tax pressure on the economic agents that eliminates the inducement to leave the sphere of official monitoring and government regulation.

The most effective method is a combination of both ways, with an emphasis on the latter. For example, in Ukraine in 2004-2005, a number of measures were taken to mitigate regulatory pressure on business entities. Their consequence was, in particular, the increase during 2004-2007 of the number of registered small businesses up to 40.6 thousand or 14 per cent. A large part of them are the economic agents that previously operated in the informal sector and legalised themselves.

Participation in the activities of the restrictive nature, aimed at legalizing informal agents, is generally not inherent to the competition departments.

With regard to promotional activities that are aimed at legalizing the informal sector, competition authorities may take part in them, if they are, in particular, authorised in relation to the actions of state bodies that lead to increase of costs of economic agents related to the legalisation and official procedures for monitoring and regulation and hence stimulate activities in the informal sector. In Ukraine such problem exists, in particular, in the field of paid services of public authorities relating to the implementation of state quality control standards, the examination required for business start-up, etc. The relevant services are provided by public authorities for payment to those who need them, that is, sold as a commodity. But because such services are provided at the sole basis, the markets which they form are for the most part monopolistic. In 2007, the Antimonopoly Committee of Ukraine identified more than 960 monopolised markets of paid services of public authorities.

Planned total volume of paid services of public authorities in 2008 exceeded the amount of revenue from excise duty of goods produced in Ukraine. It should be noted that in the above-mentioned markets there is an acute problem of monopoly abuse, in particular, the high prices, discriminatory prices, imposition of terms and conditions of contracts that are not related to the subjects of these contracts. Only during 2006-2007, the Antimonopoly Committee of Ukraine discovered more than 1500 such violations in the markets of paid services of public authorities. Their termination in some way helped to mitigate regulatory and administrative pressure on economic agents.

Another area of activity of a competition agency that promotes legalisation of the informal sector is termination of actions of state authorities that have anticompetitive effects and, at the same time, lead to increased regulatory pressures on businesses. It is a particular question of establishment of unlawful prohibitions or obstacles to the entrepreneurship, or prohibitions not provided by law, and restrictions on independence of companies (such actions may be, for example, in the introduction of additional permitting procedures not provided by law, or in an unauthorised shortening of validity of the relevant permits). Only during 2006-2007, the Antimonopoly Committee of Ukraine terminated more than 260 such acts of state bodies, which also, in a certain way, helped to mitigate the regulatory burden on entrepreneurship.

ZAMBIA

1. Information and relevant background

On 15th July, 2008, the Commission received a complaint from Zambia Banana Traders Association (ZABATA) against commercial banana farmers who had constructed cold rooms for treatment of bananas. Specifically, ZABATA alleged that there was a group of farmers who had stopped supplying them bananas and had instead opted to trade as both wholesalers and traders.

According to ZABATA, their refusal to supply has resulted in the association not having enough bananas to sell as they cannot source bananas elsewhere. ZABATA claimed that they needed about 35 tonnes a day to meet consumer demand. At the time of the complaint, the association was reportedly only able to access about 10 tonnes of bananas per week, which they were sourcing from small scale farmers.

The other concern by the association was that the commercial banana farmers were likely to drive them out of business as the traders were not able to compete with them as the farmers end up selling directly to consumers at relatively low prices which were not competitive for the middle men (i.e. the traders). Further, ZABATA wanted to know whether these farmers had obtained licenses from Government to engage in wholesaling and retailing as well.

2. Legal provisions and assessment tests

2.1 Section 9 of the Act states that:

> "(1) It shall be an offence for enterprises engaged on the market in rival or potentially rival activities to engage in practices appearing in sub-section (2) where such practices limit access to markets or otherwise unduly restrict competition. Provided that this subsection shall not apply where enterprises are dealing with each other in the context of a common entity wherein they are under common control or where they are otherwise not able to act independently of each other.
>
> (2) This section applies to formal, informal, written and unwritten agreements and arrangements.
>
> (3) For the purposes of subsection (1), the following are prohibited:
>
> …..
>
> (f) concerted refusals to supply goods and services to potential purchasers."

2.2 Assessment Tests

In view of the provision of Section 9, the following are the Statutory Assessment Tests:

a) Whether there is rivalry or potentially rival activities in the relevant market Section 9(1.)

b) Whether there was concerted refusal to supply

c) Whether the defendant/s was/were the only feasible suppliers of the goods and services

3. Findings

3.1 Parties

3.1.1 Zambia Banana Traders Association (ZABATA)

ZABATA was formed in 2002 and was registered under the Registrar of Societies in the same year (ZABATA constitution is attached). ZABATA is situated at Soweto behind City Market. ZABATA has over 200 members who deal in treating and selling of bananas which are sourced from commercial farmers.

ZABATA submitted that the farmers had stopped supplying them with bananas as they opted to sell the bananas directly as wholesalers and retailers. ZABATA alleged that this has likelihood to drive them out of business as they are unable to compete with these farmers who are selling at low prices which are not competitive to the middle men. ZABATA also alleged that they are having shortages of supply as an association as before, they could access about 35tonnes of bananas per day from farmers but are currently accessing only about 10 tonnes of bananas per week. ZABATA, however, said that there was no shortage of supply of bananas to meet consumer demand as the farmers were selling instead of them.

ZABATA also clearly stated that these farmers were acting as individuals in their refusal to supply them with bananas.

3.1.2 Banana Farmers

These are commercial farmers distributed mainly on the Southern part of Zambia. They constitute more than half the number of total commercial farmers involved in banana production in Zambia. They include Chiawa Farms in Kafue District which runs a cold room at Citizen Breweries in the industrial area in Lusaka; Go-Banana in Mazabuka which runs a cold room opposite Mukupa Guest House about 500m away from Soweto Market; Hot Man of Sikongo in Siavonga which runs a cold room opposite Stanbic Bank in the Industrial area; Mafosholo of Siavonga which runs a cold room at Soweto market and Jerry Cabine of Chiawa who is into exporting of bananas.

3.1.3 The Zambia National Farmers Union

Zambia National Farmers Union (ZNFU) expressed ignorance of the existence of ZABATA and said that they did not appear in their data base. As such, ZNFU said they could not say that they ever had dealings with ZABATA.

3.1.4 The Relevant Product Market

The relevant market is the distribution of bananas to the middlemen (wholesalers and retailers)

3.1.5 The Geographic Market

The geographic market is Lusaka (the capital city of Zambia).

3.2 Competitors and Market Shares

The market for the production and supply of bananas is highly fragmented and it is difficult to ascertain and assign market share to each producer, more than that the sector is not formally organised –

both from the producer and the retail trade. However, the principal suppliers of ZABATA are the banana growing commercial farmers, whose competition is largely imports which trickle in through only two South African owned national retail outlets.

Apart from the formally organised commercial farmers, ZABATA has another source of bananas for resale and this is the micro and small scale farmers who are unable to satisfy their demand. Currently these farmers are reckoned to only supply ZABATA about 10 tonnes per week as opposed to about 35 tonnes per day that ZABATA would order from the farmers.

3.3 Major Customers

Major customers are the general public who buy banana at Soweto market. Soweto market is a mass market with both in-door and a massive outdoor market area of all informal traders dealing in all kinds of agricultural products. Over the years, the market has also began to carter of informal sector furniture, second hand clothes, car spare parts, and traditional medicinal herbs.

3.4 Ease of Market Entry

There seems to be easy entry in this sector as anyone can acquire a market stall from Lusaka City Council and trade. One can either be given a wholesale or a retail licence depending on the needs of the trader.

4. Analysis of the Case

It would appear from the market conduct that the banana farmers were acting in collusion - either an explicit or passive collision to avoid selling bananas to the informal traders who for obvious, may not have been a steady and lucrative market and thus opted to add a bit more value to the bananas and trade directly with some of their valued customers.

However, the informal sector is not legally protected under the law and thus the accusation against the banana farmers did not appear to be legally enforceable against an "illegal" grouping of informal self-employed traders. The trend appeared to be targeted at reaching directly the formal trade of the market where the returns for the farmers were higher and steadier, thus eliminating the informal middle-man. The traders wanted to be protected using the competition law – which law could not protect them.

It has been submitted that through the farmers directly selling and by-passing the middle-men, the consumer ends up buying the product at a lower price. This achieves one of the major objectives of the Act, which is to achieve consumer welfare. This has a positive effect on the economy in general.

5. Conclusion

This case is a paradox of how a possible collusive conduct, which is prohibited outright, could not be enforced due to lack of a legal platform by the complainant – the informal trader – hence not considered an enforcement priority within the resources of the Commission.

The Commission also considered the fact that the banana farmers were actually adding value to the process and affording the consumer to buy bananas in a more conducive state and at a relatively lower price.

6. Commission decision

From the analysis above, the Commission resolved to discontinue the investigations and closed the case.

CUTS INTERNATIONAL[1]

1. Abstract

The existence of the informal sector has both positive and negative implications for the level of competition in the economy. The positive influences emanate from the fact that informal firms are usually small and therefore individually less likely to be the source of dominance than formal firms. Negative implications can arise in myriad ways: unmonitored price collusion and dominance by some informal sector firms affecting other informal sector firms; formal sector being subjected to unfair competition by the informal sector in the form of lower prices facilitated by tax avoidance, hard to catch product adulteration and even physical obstruction; and last, formal sector firms employing anti-competitive practices such as predatory pricing to eliminate informal competition.

The paper recommends that the decision to formalise the informal sector should be based on a cost-benefit analysis. It goes on to elaborate on the various methods of formalisation: reduction in the number of procedures/clearances involved or time involved in registration of firms in the formal sector, extent of corruption that determines the magnitude of bribery involved in the same process; and reduction of disincentives such as high tax rates coupled with enhancement of incentives such as credit leveraging and entrepreneurial assistance/ training provided by the government to the formal sector.

2. Introduction

In many developing countries such as India the informal sector accounts for a large chunk of economic activity. As informal firms are very different from formal firms in nature, management and scope for government control, the existence of a large informal sector can have significant implications for the level of competition in the economy.

This paper specifies a research and action agenda which examines the implications of the informal sector for economy wide competition through a component by component examination of effects. It goes on to explain how such examination can help in deciding whether formalisation of this sector is desirable from the viewpoint of enhancement of competition. Last, it spells out the needed research and action in the implementation of a decision to formalise.

3. Working Definition of the Informal Sector

Though the 'informal sector' has been defined in a many ways (see Sethuraman, 1974), adding to the confusion in identifying it, a convenient and broad definition is "economic activity in a nation which is not administered in any substantial way by the government". Informal sector enterprises do not pay any taxes to the government or adhere to labour regulations nor are they the recipient of government provided/facilitated credit, entrepreneurial advice/training or other facilities. Though informal sector firms do not have to adhere to formal rules laid down by the government, those in the same product line often follow a set of informal business norms arrived at by mutual consent.

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The informal sector needs to be decomposed into various parts to facilitate better analysis of its behaviour:

a) Activities that deal with the distribution and manufacture of products that are strictly banned (manufacture of mind altering drugs, certain explosives etc and services such as prostitution)

b) Cross-border trading in products which can be legally consumed but is illegal on account of not being registered with the government and/or in violation of embargoes and official tariffs

c) Unauthorised internal distribution of services /amenities which are also being lawfully produced/distributed (power theft and distribution to unregistered customers)

d) Production of goods/services which is not administered by the government (e.g. that by small workshops manufacturing shoes, small restaurants etc)

e) Hawking and vending activities, which the government finds difficult to account for or administer, because of small magnitudes and geographical mobility

Note that a) is very different from the other categories which have a formal counterpart – businesses registered with the government producing the mentioned products.

4. The Informal Sector and Competition

It is only the formal sector which is administered by the government. Thus, the government has records of the location, number and business activity of firms operating in this sector but not of firms in the informal sector. Thus, the firms in the latter sector are generally outside the ambit of competition law. Because these firms usually do not maintain any written records or give receipts for payment it would in any case be very difficult to punish these for anti-competitive practices. Usually their small size and large number ensure that detection of anti-competitive practices by informal sector firms and consequent punishment are not economically viable for competition agencies because of enforcement costs exceeding economic benefits.

The following sum up the impact that the informal sector has on the level of competition in the economy:

4.1. Positive impact

In many product lines, such as fruit and vegetable selling, the informal sellers in a market approximate a perfectly competitive set up as individual businesses are small, products are identical (for instance, cauliflower sold by seller A is very similar to that sold by seller B) and sellers are physically proximate to each other.

Such perfect competition is often not seen in the formal sector because of various reasons: larger businesses, product differentiation either because of distinctive content or packaging etc. The assumption here of course, is that more competition is desirable with perfect competition constituting an ideal state in which competition among firms is maximised i.e. a frictionless world.

4.2. Negative Impacts

Again these are of different kinds:

- A larger size of the informal sector in any product line implies a smaller formal sector. A smaller number of firms in the formal sector increases the market power of individual firms and therefore has a deleterious impact on competition. (B1)[2]

- Because the government does not have a list of informal firms it is often difficult for the competition authority to identify abuse of dominance from the formal sector impacting the informal sector (B2). This can be a powerful anti-competitive force when the number of formal firms is small and these are geographically spread out, giving rise to strong monopolistic or oligopolistic tendencies.

  For example, consider a single formal producer/distributor of milk competing against numerous informal producers (these are milkmen not registered with the government). The formal producer/distributor might try to wipe out competition from the rival milkmen through predatory pricing. The competition authority might not be able to rigorously establish 'abuse of dominance' because of the absence of statistical data on prices charged by informal producers or even of their existence, the reluctance of informal producers to lodge complaints because of their unofficial status and the difficulty in comparing informal product quality to formal product quality.

  A real life version of this example was noticed in Peru where predatory pricing by the major milk industrialist against small dairy producers brought down the price of milk in Peru to $ 0.26 while it was $0.38 and $0.43 in neighbouring Chile and Brazil (Via Lactea, 2007).

- Anti-competitive practices originating within the informal sector and impinging on informal sector firms (B3): Competition inside the informal sector will be high if it is made up of a large number of small producers/distributors selling/producing identical products. Whether that is indeed the case in the informal sector for every product line is a question which begs further research. For example, vegetable markets and their resident sellers often belong to the informal sector. The fact that they sell visually indistinguishable products and are not separated by any considerable physical distance leads to an equalisation of prices for their product, over the level of which each seller exhibits very little control.

But whether all product-specific informal sectors have the same characteristics as the mentioned vegetable market is an interesting question that needs to be explored. The most important feature that needs to be examined is the relative sizes of various players operating within the informal sector. Consider an informal seller of sweets who is suddenly faced with competition from another sweet seller who sets up his shop nearby. If the former seller has enough cash balances to fall back on, he can resort to predatory pricing, thus squeezing the second seller out of the market. The important question is whether such differences in the size of wealth exist among agents in the informal sector.

What about collusion in the informal sector? Again the unorganised nature of processes makes it very difficult to ascertain whether there is collusion inside the informal sector, say a vegetable market. However, systematic research which covers different vegetable markets can determine whether there are any unexplained differences in prices across vegetable markets (the assumption being that within a vegetable market, proximity leads to identical prices for a given product across sellers but also might

[2] Note these letter-number combinations are used to denote various categories of effects of informality on economy wide competition and sub-categories within these

facilitate collusion). If such unexplained differences do exist, then price collusion which holds product prices artificially above the competitive level is a major possibility.

Another major source of distortion in competition is product adulteration. Most items of consumption, be these food items or furniture, can be adulterated without the consumer knowing that this is the case. Adulteration can be employed to augment profits as the consumer's lack of knowledge about product inputs can be used to cut costs without commensurate change in prices. Adulteration not only detracts from consumer welfare but its differential application by producers implies that competition is often unfair and results in a low equilibrium level of product quality. Misleading advertisements in the informal sector (signs on shops etc) can also be treated as 'product adulteration'.

Thus, anti-competitive practices originating in the informal sector and impinging only on informal sector firms are possibly of three types:

- Abuse of dominance (B3a)
- Price collusion (B3b)
- Product adulteration (B3c)

Anti-competitive practices originating within the informal sector impinging on the formal sector (B4): Not only does the existence of the informal sector have implications for the extent of competition among constituent agents but it also influences the sales of the formal sector. Note that many products are sold by both formal and informal sector firms. Because informal firms do not pay any taxes they might be able to out price formal sector firms. This amounts to unfair competition.

Informal sellers, such as neighbourhood vegetable vendors, are often more mobile than formal sellers selling the same product who are fixed in space. Purchase of products from such informal sellers might be more convenient for customers. In many cases informal sellers might physically block access to formal sellers. For example, hawkers and peddlers outside formal sector shops or on footpaths leading up to these shops might create difficulties for parking of cars or even for pedestrians trying to access these shops.

A real life example of unfair competition provided by the informal sector to the formal sector can be cited from the Peruvian experience. In the 1970s the 30 largest bus companies in Peru commanded 70 percent of the bus fleet and 60 percent of the routes. After the 1970s numerous small/informal bus operators entered the industry and depleted the market share of the large bus companies given that they did not have to pay much of the taxes required from the formal sector or adhere to many of the formal quality norms As a result in 2000, the mentioned top 30 percent commanded only 30 percent of the fleet and 12 percent of the routes (Roca et al, 2008).

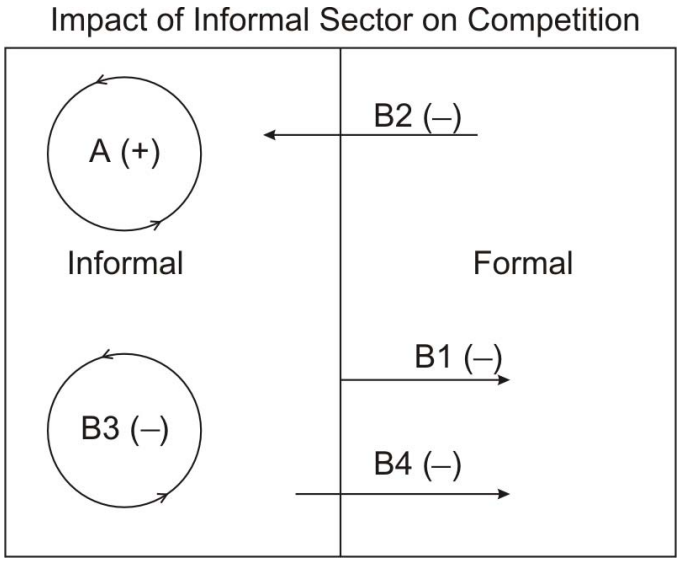
Table 11. Impact of Informal Sector Expansion on Economy Wide Competition

Type of effect	Description/Component	Symbols
Positive	**Caused by small geographically proximate firms selling uniform product**	**A**
Negative	**Depressing the number of formal firms**	**B1**
Negative	**Increase in incidence of abuse of dominance by formal firms**	**B2**
Negative	**An increase in the size of the informal sector increasing the scale of associated anti-competitive practices**	**B3**
Negative	Abuse of Dominance	B3a
Negative	Price Collusion	B3b
Negative	Product Adulteration	B3c
Negative	**Increase in unfair competition from the informal sector for the formal sector**	**B4**

Note: The meaning of symbols remains unchanged in the figure below

The net impact of the informal sector on the level of competition in the economy is an algebraic sum of the positive and negative effects. It is a matter for research to investigate the relative magnitudes of these effects to determine whether the net effect is positive or negative. Interestingly, the answer could be qualitatively different across countries and could be a function of the economic, geographic and demographic characteristics of the country.

The table above summarises the various impacts of the informal sector on economy wide competition. Note that effects outlined in bold font represent broad categories of effects; the constituent sub-categories if any are outlined in ordinary font. The figure below presents a more visual depiction of these effects. Arrows that go from the informal sector to the formal sector or vice-versa depict inter-sectoral effects while circular arrows refer to 'within sector' effects. The arrow that emanates from the boundary between sectors illustrates the effect that the shifting of the boundary has on formal sector competition.



Note: Refer to Table above for a classification of impacts

5. When do we need to tackle informality?

Because informality is often synonymous with small size (a characteristic which aids competition) and formality is associated with larger sizes, in many cases formalising the informal sector might not be desirable for competition. It is only when the sum of the magnitudes of negative effects (B1-B4) overwhelms the positive effects of small size that accompany informal activity that formalisation of the informal sector might be advocated.

In other words, any decision to formalise the informal sector must be preceded by a rough cost-benefit analysis with respect to implications for competition. Given a policy objective of maximisation of competition, a general policy decision to formalise is recommended if the net expected benefit in competition terms is positive.. Alternatively, a broader decision framework can be used: net benefits from competition can be added to those in terms of tax revenues etc to arrive at a more holistic measure of net benefit from formalisation.. The decision to formalise then rests on whether this measure of net benefit is positive or negative.

Another way to make this approach more nuanced would involve taking the decision of formalisation separately for the different sectors of the economy (dairy, fruits and vegetables, construction etc) on the basis of separate cost-benefit analyses.

6. A guide to formalisation

Once the decision to formalise is taken it obviously has to be implemented by nipping the motives for running/establishing informal firms in the bud. The various reasons why individuals set up informal firms might be the following:

- Too many procedures and clearances required for setting up formal firms
- Time consuming nature of the above procedures with attendant opportunity costs of time borne by the entrepreneur
- Corruption at the entry points to the formal sector i.e. money has to change hands to get the required clearances
- Credit and other facilities provided by the government for formal sector firms not large enough to entice entrepreneurs into the formal sector.
- High tax rates in the formal sector

Each of these barriers to formalisation has to be tackled (see Mitra, 2005 for related discussion). For example, the number of procedures and clearances required for setting up of firms can be pruned by following the example of countries which require fewer procedures/clearances. The Doing Business 2008 Report published by the World Bank can help in identifying countries with the fewest required procedures and their example could be followed.

While pruning the number of procedures, legal or constitutional costs have to be taken into account i.e. the removal of procedures/clearances from the list of requirements should be sought only if a) these are not central to the process of setting up business and its economic ramifications and b) their removal is not associated with prohibitive legal or constitutional costs in terms of both time and money.

Total procedural time costs can be reduced substantially by identifying procedures that involve the highest costs. Again the Doing Business Reports of the World Bank might be helpful in this regard. In reducing the time costs, removal of the procedures with high time costs from the list of requirements might be a possibility but only if criteria a) and b) are met. The second way is to institute organisational changes i.e. clubbing procedures under common windows or instituting a single window system of clearances.

The removal of corruption requires a systemic analysis specific to each country. Such analysis is bound to reveal different causes of corruption. The first step in this regard is to ascertain whether the level of corruption is indeed high. Indicators such as the Corruption Perception Index estimated by Transparency International might be useful in this regard.

Once indices reveal the level of corruption to be high, then the involved researchers face the difficult task of ascertaining underlying reasons. The literature on corruption points to many possible causes of corruption – the existence of all of these has to be verified.

The list of possible causes, as pointed out by the economics literature, may be as follows:

- Low salaries of government officials
- Inadequate efforts/expenditure devoted to monitoring of government officials
- Inadequate punishment or legal barriers in punishing government officials
- Deeper causes e.g. corruption at the entry points of government service forcing recruited government officials to turn corrupt for repayment of debts thus incurred

If any of the above factors is/are found to be present and linked to the problem of corruption, then suitable remedial steps can be taken. The existence of deeper causes if ascertained can be helpful in working out a strategic approach for the elimination of corruption.

For example, if corruption at the entry points (see Mitra, 2003 for an elaborate discussion of this issue) is a significant cause for government officials turning corrupt then a strategic approach can concentrate on trying to remove corruption at the entry points only, rather than trying to remove it everywhere. This is because anti-corruption programmes involve costs in terms of human capital and money.

Cost and benefits of formal operation relative to that of informal operation might be another factor determining entry. If tax rates are very high then the government might consider reducing these. As a lower tax rate encourages entry into the formal sector, therefore, contrary to common perception, it might result in higher revenues for the government. In that case tax reduction might be a win-win measure for government and business.

The ability of the government to leverage easy credit for formal firms from the formal credit market and at rates much below those corresponding to the informal financing sector (suppliers of credit to the informal sector) might also encourage firms to enter the formal sector. Good entrepreneurial advice and training provided by the government might be another factor.

7. Conclusion

According to the paper the informal sector can be broadly defined as those producers/sellers who fall outside the scope of government control for various reasons. The existence of the informal sector has both positive and negative implications for the level of competition in the economy.

The paper then goes on to elaborate on the positive and negative influences. The positive influences emanate from the fact that informal firms are usually small and therefore individually less likely to be the source of any dominance. Negative implications can arise in myriad ways: price collusion and dominance by some informal sector firms affecting other informal sector firms; formal sector being subjected to unfair competition by the informal sector in the form of lower prices facilitated by tax avoidance, hard to catch product adulteration and even physical obstruction; and last, formal sector firms employing anti-competitive practices such as predatory pricing to eliminate informal competition.

The paper recommends that the decision to formalise the informal sector should be based on a cost-benefit analysis – the positive effects can be termed as competition related benefits and the negative effects as cost. A net negative effect justifies formalisation; otherwise continuation of informality might be desirable.

The paper goes on to elaborate on the various methods of formalisation: reduction in the number of procedures/clearances involved or time taken in registration of firms in the formal sector, corruption that determines the magnitude of bribery involved in such processes; and reduction of disincentives such as high tax rates and enhancement of incentives such as credit leveraging and entrepreneurial assistance/ training provided by the government to the formal sector.

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MR. SIDDHARTHA MITRA



Outline

- Working definition
- Classification arising out of working definition
- Informal sector and competition: peculiarities of the relationship
- Effects of informal Sector on competition
  - Positive effects
  - Negative effects
    - Dynamic effects
    - Static effects

Outline (2)

- Deciding to formalise: cost-benefit analysis
- Explanation for co-existence of formality and informality
- Facilitation of formalisation
  - Reasons for the existence of the informal sector
  - Formalisation by neutralising motives
- Conclusion

Informal Sector: Working Definition

- Defined in many ways
  - Size
    - Number of employees
    - Capital stock
  - Legality
  - Nature of functioning: informal norms versus rules
- Working Definition
  Economic activity in a nation which is not administered in any substantial way by the government

Classification Arising out of the Formal Definition

- Distribution and manufacture of banned products
- Illegal cross-border trading in products otherwise legal
- Unauthorised internal distribution of services /amenities otherwise legal
- Production of goods/services not administered by the government
- Hawking and vending activities

Informal Sector and Competition: Peculiarities

- Small size and undifferentiated products might imply closer approximation of perfect competition
- Such characteristics might not be seen in all sectors (vegetable selling versus restaurants)
- Lower surpluses: productivity enhancement through innovation/investment is less probable
- Competition law difficult/impossible to enforce in some informal sectors characterised by large numbers, small size, mobile nature of firms, lack of records, non-standard products

Impact of Informal Sector on Economy Wide Competition

- Positive Effects
  - Physical proximity of sellers, small size, identical products
- Negative Effects
  - Dynamic Effects
    - Lower surpluses: competition through innovation is impeded
  - Static Effects
    - Smaller formal sector
    - Intra-informal sector anti-competitive activity
    - Unfair competition for the formal sector
    - Abuse of dominance held by formal sector firms over informal firms

The Decision to Formalise: Cost Benefit Analysis

- Aggregate algebraically all effects to arrive at net effect of informal sector on economy wide competition
- Negative effect can be used to justify formalisation: otherwise continuation of informality is advised
- Qualifying statements
  - Aggregation might throw the baby out with the bath water: sector analyses are advisable
  - Addition of other effects such as tax revenues foregone because of informality might be advisable

Co-existence of Formality and Informality: Explanation and Implications

- Initial differences in wealth
  - Less wealthy entrepreneurs cannot incur registration costs
  - They cannot pay the necessary bribes to gain entry
- Presence in other sectors might make the time costs needed to enter the formal sector more bearable (?)
- Equilibrium might be attained: unfair competitive advantage of informal firms might freeze the structure of a sector

Facilitation of Formalisation

Reasons for the Existence of the Informal Sector

- Too many procedures/ clearances required for setting up formal firms
- Time consuming nature of the above procedures
- Corruption at entry points to the formal sector
- Credit and other advantages provided to formal sector firms not large enough
- High tax rates in the formal sector

Facilitation of Formalisation

Formalisation by neutralising motives

- Lower the number of procedures – strategic approach directed towards areas of least resistance
- Lower time costs – single window or bunching of procedures
- Lower corruption
  - Increase salaries of government officials
  - Increase monitoring efforts/expenditure
  - Increase punishment and remove associated barriers
  - Tackle deeper causes through strategic approach
- Lower tax rates

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Conclusions

- Informality has both positive and negative effects
- Formalisation needs to be preceded by a cost-benefit analysis
- Sector analysis is necessary – aggregation might lead to inappropriate decisions
- Initial wealth differences might lead to sectors with mixed presence – a self perpetuating phenomenon
- Formalisation requires a multi-pronged attack – deregulation, administrative restructuring and lubrication, campaign against corruption, more liberal tax regime etc

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MS. RITA RAMALHO

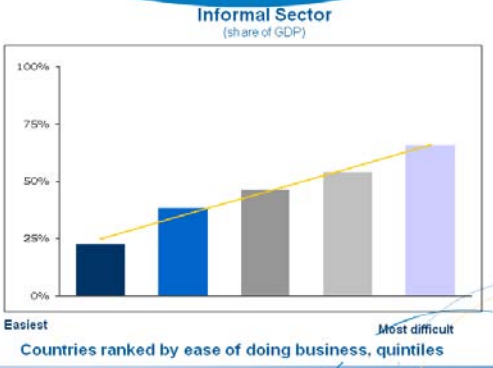


Informality: A Constraint on Development

- Low income economies tend to be dominated by large incumbents, substantial informal sectors and relatively small formal SME sectors
- Compared with formal SMEs, informal firms:
  - Have more trouble accessing credit
  - Are less likely to contract with foreign-owned companies or to export
  - Grow more slowly and hire fewer people
  - Have workers without formal worker protections

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Getting to Formal: Business Regulation Matters



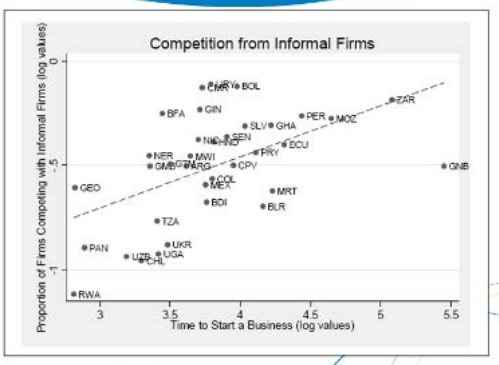
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If the cost of starting a business is high, entrepreneurs delay registering…



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. . . and formal firms face more competition from informal ones



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The Good News: Governments are Actively Reforming

- *Doing Business 2009* recorded 239 business regulation reforms in 113 countries in 2007/08
  - Eastern Europe and Central Asia – 62 reforms in 23 of the 25 countries, 25% of the total recorded worldwide.
  - Africa – 28 of 46 countries completing 58 reforms.
- Since *Doing Business* began, we have recorded nearly 1000 business regulation reforms

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The Most Popular Area for Reform: Business Start-Up



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Getting to the Top:
What the DB Top10 on Starting a Business Have in Common
1. New Zealand
2. Canada
3. Australia
4. Georgia
5. Ireland
6. United States
7. Mauritius
8. United Kingdom
9. Puerto Rico
10. Singapore
No or minimal minimum paid-in capital requirement
Standardized forms
No courts involved
Fixed registration fee
No publication in legal journal required
4 procedures, 5 days, start-up fees 1.5% GNIpc (on average)
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IFC
What Happens When Governments Reform Business Start-up Regulation?
Firms take notice:
E.g. Georgia: 55% increase in business registration – up to 15 formal firms per capita (equivalent to Malaysia, Singapore)
And broader benefits follow:
Research findings: lower costs of entry associated with more entrepreneurship, less corruption, more employment opportunities, and a smaller informal sector
One example – Mexico: business registration up 5%, employment up 2.8%, prices down 1%
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Building Datasets: Enterprise Surveys
www.enterprisesurveys.org/
Enterprise Surveys
What's New?
Current Projects
Full Survey Data
Research
financial & private sector development
IFC

Learning More About Informality: Building on the Enterprise Surveys

- New surveys underway in Africa, Nepal, targeting informal firms. Objectives are to:
  - Characterize informal businesses. Characteristics of the entrepreneurs, activity, use of capital and other assets, employment structure, seasonality
  - Explain differences in business performance when compared to formal counterparts
  - Assess the costs and benefits of formalization.
  - Understand the industrial and spatial pattern of informal activity
- The challenge has been how to randomly select informal firms to survey. From a theoretical approach based on random walk ad hoc adjustments have been necessary to respond to the characteristics of each country
- Initial evidence is that response rates are very high (higher than in formal surveys).

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13

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MS. TAIMOON STEWART

Abstract

The paper provides a brief description of informality in Jamaica and the features of this sector. A conservative estimate is that 41 per cent of GDP is generated by this sector, and businesses span the subsistence sub-sector through micro, small, medium and even large firms that do not conform to regulations and evade taxes. It concludes that informality is the norm in Jamaica.

Competitiveness of informal firms is reduced because of their expenditure on protecting themselves from criminal activities. Productivity levels can be increased if informal firms access government assistance, both financial and technical, but this requires firms to be registered. However, this can prove to be an incentive to move into the formal sector.

The Jamaican government is making serious efforts to eradicate corruption in customs, to stamp out evasion of customs duties, and to enforce the law in respect of tax obligations. However, there are bureaucratic bottlenecks that still need to be addressed, and the need to introduce good governance practices within government.

While under the Fair Competition Act (FCA), all businesses, regardless of size, are under the jurisdiction of the Fair Trading Commission (FTC), it does not cover practices involving evasion of government business regulations. The FTC does, in the course of its investigations, encounter firms that are operating illegally, and does engage in advocacy to the relevant government agencies. The FTC also encounters problems in defining relevant market because of grey areas in terms of market segmentation. However, there are geographic locations where markets are segmented.

The Jamaican Informal Business Landscape

Types of Business

Fifty-two per cent of the 2.7 million population of Jamaica lives in urban areas (Statistical Institute of Jamaica 2007) and there exists in these areas large and volatile inner cities, particularly in Kingston. Poverty and unemployment rates are high, and there is a large informal economy, here defined as economic activities in the production of goods and services that are unregistered and operate outside government regulation and taxation systems[1].

Features of this sector found in other countries also apply to Jamaica. It generally involves use of cash as the most common medium of exchange, or bartering or swapping goods or services. In both cases, it means receiving payment that is not traceable, and the income is not reported for tax purposes. Another feature of the informal sector is that labour laws, health conditions, safety standards, and location of activities according to zoning laws are all largely ignored. (Losby et al. 2002: 6-8).These strategies provide the informal business persons with a competitive advantage: paying lower wages, non-compliance with

[1] Between 1989 and 2003, Jamaica's poverty headcount ratio declined from 30.5 percent to 19.1 percent (World Bank Development Progress Report, October 2008). Many analysts attribute this remarkable phenomenon to the existence of the informal subsistence sub-sector in the economy.

tax, and inattention to other regulations allow them to operate at cost levels that give them their edge (ibid: 37). In Jamaica, avoidance of custom duties is an important part of cost cutting strategies.

Crime has a great impact on the competitiveness of both the subsistence sub-sector and established firms throughout the economy, as the criminals are organised "mafia-style" and extract "protection" money, rob, steal, and threaten physical safety. This has negative impacts on costs and productivity throughout the economy[2]. In the World Economic Forum, Global Competitiveness Report 2008-2009, 22.7 per cent of Jamaican business persons identified crime and theft as the most problematic factor for doing business, while 12.7 per cent identified inefficient government bureaucracy, and 9.8 per cent identified corruption as the greatest problem. Small businesses were identified as the ones most affected by criminal activity (World Bank 2004, The Road to Sustained Growth in Jamaica. www.worldbank.org). These firms may not be able to pay the cost of high security and are thus rendered vulnerable to the criminals.

Types of businesses found in the informal sector include subsistence level operations, micro and small enterprises (MSEs), and even medium and large enterprises.

- In the subsistence informal sub-sector are found street vendors or itinerant traders selling out of vehicles or hand pushed carts. Others include domestic helpers and cleaners, hair dressers, gardeners, taxi-drivers, construction workers, cosmetologists, and so on. Businesses of these types can be very transient because of under-financing or unprofitability where there are too many players in the market. In the rural areas, they produce and sell food products (ground provisions, vegetables and poultry etc.), engage in agro-processing (jams, jellies, sweets, etc.) and even provide technical agricultural services, such as artificial insemination of animals (which has been learned from technicians and sold on at a lower price).

- There is also a multitude of persons operating as informal taxis in the transport sector, and competing with the registered taxis. There are no limits imposed on the number of registered taxis that can operate on a route. It is standard procedure for a car owner who needs additional income to operate illegally in this sector, or hire drivers to do so. As such, there are too many operators, too much competition, and too little regulation.

- Beyond these, there are the informal firms that deliberately remain invisible to escape meeting tax and regulatory requirements (MSEs, medium and large firms), the home-based business persons of higher education who do not register, and those who operate both in the formal and informal sectors. Medium, Small and micro firms employ approximately 84.9 per cent of the working population and are therefore very important[3]. According to a recent IADB study[4], the size of the informal sector in Jamaica is estimated at 43 per cent of GDP as at 2001, and is estimated to have doubled over the previous decade[5].

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2 Jamaica is an extremely open economy, and domestic firms compete with imports in their home market, and export competitiveness is lessened.

3 According to data published by the Statistical Institute of Jamaica, in July 2008, there were 1,163,200 persons employed, and of that, only 175, 936 were employed in large establishments. Therefore, 987,264 persons were employed by medium, small, and micro enterprises.

4 IADB, 2006"The Informal Sector in Jamaica". (December). www.iadb.org.

5 The target groups that were measured in this study were in three categories: pure tax evaders (operating registered businesses but not reporting earnings); the irregular economy (unregistered businesses); illegal activities (evading taxes, unregistered and criminal activities). The survey was based on a size-stratified random sampling of 1,226 out of a full listing of Jamaican [business] premises.

The IADB study revealed that many enterprises are concentrated in low-productivity, labour-intensive activities, with some 60 per cent of persons operating in the informal sector engaging in wholesale/retail trade. Most own-account business persons do not have a bank account, either maintaining total financial self-sufficiency or managing their affairs through other informal financial institutions."[6] Banks require a business plan and lower income persons generally do not have the skills to produce it, and do not have the money to pay someone to do it.

Level of non-compliance

An important finding of this study is that most Micro and Small Enterprises (MSE) do comply with some regulations, but not all. The authors concluded that "… informality is a continuum….", given that most MSEs satisfy some requirements but not others, and that informality is, to a large extent, standard operating procedure among Jamaican MSEs (IADB 2006:27). *Indeed, in the January 2009 budget speech, the Prime Minster pointed out that a mere 1 percent of firms pay 80 per cent or more of taxes, and only a handful of the employed labour force pays income tax. He also said that far too many eligible firms are not registered to pay or do not remit their General Consumption Tax (The Gleaner, Editorial, Monday January 19, 2009).*

The authors of the IADB study found that ignorance and high bureaucracy were among the most cited reasons for non-compliance among MSEs. Yet, the World Bank study, *Doing Business 2009* (www.worldbank.org), which undertook to compare regulations in 181 countries, found that in Jamaica, six procedures were required which took 8 days to accomplish, at a cost of 7.9 % GNI per capita. Jamaica had a global rank of 11 out of 181 countries. The Business Registration website for Jamaica confirms this.

The Doing Business 2009 ranked Jamaica a low 173 out of 181 countries in terms of ease of paying taxes. They found that 414 hours were needed to prepare and submit tax returns, and the total tax rate was 51.3 per cent of profit. In the Global Competitiveness Index, 8.2 percent of businesses felt that the tax rate was the most problematic factor for doing business. It therefore seems that the bureaucratic tangle is at the level of doing business rather than the initial registration, and procedures for paying taxes. This and the high rate of taxation are the major disincentives to compliance. These factors are exacerbated by lack of trust in government's usage of the tax dollars, lack of enforcement on the part of government, and a culture of lawlessness in the country.

Trends toward formalisation of firms

Certainly there are advantages to be gained by subsistence level informal businesses if they moved to the formal sector and some businesses are taking advantage of incentives. For instance,

- registering with the Ministry of Agriculture would then give persons access to free plants, chicks and other supplies; and

- in times of natural disaster, such as hurricane damage, only those businesses that are registered would get access to government's recovery assistance. Insurance is generally too expensive for these poorer entrepreneurs.

In addition to these carrots, government is also wielding the big stick. It is becoming increasingly difficult to evade custom duties and tax obligations, government increased enforcement in the last year. A six month tax amnesty was offered to non-compliant businesses, ending 31 October 2008; recalcitrant tax

6 The "pardner" system, which involves pooling of resources by depositing each week a small amount of money, and taking turns accessing the accumulated capital (getting a draw).

payers were invited to pay fully or in tranches, without incurring the interest and penalties involved. Since then, the Tax Administration has taken legal action against 200 self employed persons and companies, for failing to make arrangements to pay outstanding taxes. They may have to pay over half a billion Jamaican dollars in outstanding tax and fines (4.8 million Euros). There is also a crackdown on firms that have not been submitting funds collected from the General Consumer Tax to the relevant government authority, Moreover, systems are being put in place, requiring a tax registration number (TRN). This is similar to the social security number in the US, the intention being that the TNR will have to be provided for every transaction with a government agency. In addition, a tax compliance certificate (TCC), has recently been introduced and this must be provided by importers before goods are cleared from the wharf or airport. Tax evasion will therefore become much more difficult.

The transport sector poses a serious challenge because of the size of informal operators, the difficulty of enforcing regulations due to the chaotic and brutal nature of the fierce competition in the sector. There is a concern that removing illegal taxis and bringing efficiencies to the sector my incur a high social cost and lead to increased crime as such operators lose income[7].

The Interface between the Formal and Informal Sectors and Competition Issues

There is trade taking place between the formal and informal sectors. Larger businesses supply informal businesses with goods:

- Street vendors buy final goods or intermediate products from the formal sector (wholesale stores, supermarkets), and then sell these goods on the streets.

- Manufacturers and distributors supply goods to MSEs and corner shops in inner cities. For instance, Grace Kennedy Ltd., one of the conglomerates in the economy, stocks informal businesses in inner-cities and rural areas with agro-processed products and give a time line to pay. Vendors are provided with biscuits and sweets.

- Supermarkets provide vendors with expired or soon to be expired goods to sell on the streets. Retailers use vendors to sell their goods on the pavements outside their stores and the GCT is not charged (a practice called "fronting). By doing so, the established businesses can compete with the informal businesses at their level, and also gain advantages over their rivals in the formal sector.

Large formal businesses purchase goods from the informal sector. For instance, Courts Ltd. and Singer Ltd. purchase furniture from small informal operators. Grace Kennedy Ltd. purchases raw materials from the informal producers in the agricultural sector. These large conglomerates do not face competition from the subsistence level operators. Rather, they draw consumers away from the informal sector by offering hire purchase arrangements with guarantees, and a monthly payment that is manageable for lower income groups.

Some persons employed in the formal sector also work in the informal sector in order to supplement their income: tradesmen such as electricians, plumbers; or civil servants may operate as private taxi drivers in their non office hours, or higher skilled workers such as computer technicians may lure customers away from their employers by offering to do jobs privately at a lesser cost. In doing so, they are competing directly with their employers, taking jobs that would have gone to the company.

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[7] Stewart, Taimoon. "Competition Issues in Selected Caricom Countries: An Empirical Examination." The University of the West Indies, 2004: 149.

What action can the Jamaican Fair Trading Commission (JFTC) take to deal with anti-competitive practices in the informal sector?

According to the JFTC, in its interpretation of the application of the law, it has jurisdiction to investigate and sanction all business persons operating in the Jamaican market, including vendors, and irrespective of legality of the business operations. The Jamaican Fair Competition Act (FCA) addresses the conduct of 'enterprises, suppliers and persons'. There are standard exemptions, but these do not include the categories of businesses dealt with in this paper. The FCA does not provide a definition for 'person' or supplier, but Jamaica's Interpretation Act defines "person" as including any corporation either aggregate or sole, any club, society, association or other body, of one or more persons. Businesses in the informal sector fall within this definition.

A decision was made by the Commissioners of the JFTC on this issue. A legal firm came under surveillance for offering an illegal DSS satellite service, and the question was raised as to whether the FTC has jurisdiction. The Commissioners directed that, as a matter of policy, a legitimate business offering an illegal service falls under the ambit of the FCA and should therefore be investigated (communication from the JFTC).

However, the FTC is limited to investigating conduct of firms as defined in the FCA, and while the process of compliance with regulations and paying of taxes increases considerably costs of operations of firms, thereby giving an unfair competitive advantage to those firms that do not comply, this does not fall within the scope of the FCA. In this regard, therefore, the FTC is limited to engaging in advocacy with other government agencies to encourage enforcement of the law.

In the process of investigations conducted by the FTC, in defining the relevant market, the illegal status of some firms has surfaced, and advocacy measures were taken with the relevant government departments. In addition, in investigations related to predatory pricing or any investigation that requires calculation of the cost price of a product, the FTC has, in the case of illegal firms, determined cost price by including the cost of paying all relevant government obligations, thereby increasing cost and more than likely rendering selling price as below cost.

Moreover, the FTC would only investigate a case if the conduct has substantial effect in the market. For that reason, price fixing and barriers to entry that are practiced in the subsistence sector, imposed by Dons, are unlikely to be investigated, even though the FTC has jurisdiction. Moreover, it is physically dangerous to challenge the Dons.

There are businesses established in the Kingston downtown area by recent migrants (from China and India in particular), which are medium-sized establishments that operate without regard to any regulations or tax laws, and that undersell similar establishments in the 'uptown' areas. They buy in bulk to achieve economies of scale, and the goods are split and shared. They compete with medium sized supermarkets and general department stores, offering similar goods at much lower prices. Vendors frequent these businesses to get supplies at much cheaper costs. This is unfair competition, but the FTC has not undertaken any investigations because conducts involving non-compliance with regulations are not covered by the FCA.

Market segmentation issues

This is a hazy area, because while there are some clearly segmented markets, some areas are greyer.

- In most respects, the subsistence sub-sector operating in the inner cities does not compete in the same market as medium and large businesses, because the market is segmented. Those selling within inner-cities target the inhabitants of those areas, catering specifically to their income level

and needs[8]. Persons from "uptown", that is, the middle and higher income consumers, would not shop for goods or services (e.g., beauty services) in the inner city communities for several reasons:

- such locations may not be considered safe;
- because most vendors are itinerant, selling products that are of questionable quality, and offer no guarantees, those who can afford it would choose to shop at establishments that are stable and offer guarantees on goods so that they could have recourse if a product is defective;
- the point above is even more pronounced when food items and pharmaceuticals products are involved because of health issues associated with poor standards and expired products; persons of means would choose to go to the established businesses where there is greater assurance of good quality.

- However, in some specific lines of businesses, such as apparel and shoes sold by the Informal Commercial Importers (ICIs)[9], there is direct competition with the small apparel businesses. In response, many of these businesses exit the "formal" market by not registering and paying taxes in order to cut cost and compete, or give up their premises and become itinerant traders, serving their customers by taking products to them or selling from home. Small businesses within the established sector are the ones most affected by the activities in the subsistence sub-sector of the informal sector, by being placed at a competitive disadvantage by similar businesses in the informal sector.

- Market segmentation is not so clear-cut in sectors such as supermarkets, whereby the shops operated by the Chinese and Indians in downtown Kingston draw a customer base from employees of the financial and legal industries, whose businesses have remained in that area, and who feel safer because of familiarity with the area (Other businesses moved out of downtown Kingston decades ago). Such consumers may frequent both uptown and downtown businesses. The FTC takes this into account in defining the market share of a firm under investigation.

The JFTC has not conducted any investigation specific to the informal sector. Nor has it conducted any studies in the area. It does plan, however, to do so in the near future.

8 As such, persons from these communities may not be able to afford buying a five pound bag of flour from the supermarket, but could buy one or half a pound from the corner shop, or through credit from the shop.

9 Women who travel to the US and other destinations to buy supplies, evade customs duties and sell at lower cost, sometimes plying their trade in their cars.

Conclusions

There are already efforts undertaken by government to track down tax evaders and to clamp down on lax and corrupt practices in customs. This will accelerate the movement away from the informal sector into the formal sector. However, it is necessary for government to complement this crackdown on businesses with rigorous application of good governance practices. They must make greater effort at enforcing the law so as to reduce crime and protect businesses, freeing the monies that are currently paid to Dons for "protection" and/or are invested in security systems (guards, electronic systems, security cameras etc.). This money could then be used to pay government taxes.

The government now needs to simplify and streamline procedures for preparing and submitting tax returns, consider reducing the tax rate, so as to encourage compliance and spread the burden over a greater number of firms, and reform the bureaucracy to remove the bottlenecks encountered in the course of doing business.

The government should also embark on a programme of information dissemination and education targeting the lower income groups to highlight the benefits to be gained from government projects that can only be accessed by registered businesses. Productivity levels would rise, given the technical assistance that government agencies provide, but which is now not accessed by many informal businesses.

The FTC has the jurisdiction to investigate all businesses in Jamaica, however small, but can only intervene on the issue of non-compliance at the level of advocacy, and this they are doing. The FCA does not allow them to investigate "unfair" competition when cost advantages are gained though non-compliance with government regulations. They do, however, take this into account when calculating costs in predatory pricing cases.

MR. KHELIFA TOUNEKTI

POLITIQUE DE LA TUNISIE DANS LA LUTTE CONTRE LE COMMERCE INFORMEL

Forum Mondial sur la Concurrence de l'OCDE
19-20 février 2009, Paris

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Directeur Général de la concurrence et des enquêtes économiques
Ministère du commerce et de l'artisanat – République Tunisienne

1

PLAN

Introduction

I. Données sur le commerce parallèle en Tunisie
II. Objectifs de lutte contre le phénomène
III. Actions entreprises pour l'encadrement du secteur informel
IV. Rôle de la DGCEE en tant qu'autorité de la concurrence face á l'activité informelle
V. Conclusion

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III. ACTIONS ENTREPRISES POUR L'ENCADREMENT DU SECTEUR INFORMEL

1. Renforcement du dispositif juridique et économique

- Suppression des autorisations et leurs remplacement par des cahiers des charges
- Facilitation de l'octroi des prêts destinés à l'exercice de l'activité économique (Banque de Solidarité)
- Promulgation de plusieurs lois consolidant le principe de la liberté de l'exercice des activités économiques et l'intégration dans le secteur formel :
  1 - Loi n°64 de 1991 relative à la concurrence et aux prix
- Interdiction de l'usage de moyens frauduleux lors des transactions (factures non conformes ou de complaisance…)
- Interdiction de la détention de produits ne relevant pas de l'activité professionnelle déclarée
  2 - Loi 91 – 44 relative au commerce de distribution
  3 – Loi 92 – 117 relative à la protection du consommateur
  4 - Loi n°86 de 1994 relative aux circuits de distribution des produits de l'agriculture et de la pêche

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1. Renforcement du dispositif juridique et économique (suite)

5 - Loi n °40 de 1998 relative aux techniques de vente et à la publicité commerciale :
- interdiction des ventes hors des locaux du commerce
- organisation des ventes à distance

6 - Loi n° 36 de 2001 relative à la protection des marques de fabrique, de commerce et de services (incrimination des pratiques de contrefaçon)

7 - Loi n° 9 de 1999 relative à la défense contre les pratiques déloyales à l'importation

8 - Mécanismes réglementaires de contrôle technique à l'importation de produits et marchandises

9 - Programme de mise à niveau des circuits de distribution

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2. Renforcement des actions de contrôle économique

- Publication d'une circulaire en 2006 relative aux différentes actions de lutte contre le commerce informel et la contrefaçon, comprenant en particulier :
  - des mesures de lutte contre le flux de produits portant préjudice à la santé et à la sécurité du consommateur et au patrimoine nationale tel que le carburant et les produits de l'artisanat
  - instauration d'un système d'animation de contrôle mixte (douanes, police judiciaire, commerce, santé …)
  - lutte contre la contrefaçon
  - lutte contre l'expansion géographique et temporelle des marchés hebdomadaires
  - interdiction de l'implantation commerciale anarchique

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4. Lutte contre l'expansion géographique et temporelle des marchés hebdomadaires

- Restreindre l'ouverture des marchés hebdomadaires à l'horaire légal (se limiter à un jour par semaine)
- Limiter l'espace des marchés hebdomadaires par des clôtures
- Renforcer et intensifier les campagnes de contrôle dans ces marchés

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5. Lutte contre la contrefaçon et le piratage

- Réviser les textes qui protègent la propriété intellectuelle
- Incriminer les pratiques de contrefaçon
- Habiliter les agents de contrôle économique à constater et relever les infractions relatives aux pratiques de contrefaçon
- Traiter les plaintes des entreprises industrielles et commerciales
- Organiser des ateliers de formation au profit des agents de contrôle économiques en collaboration avec les détenteurs de marques victimes de la contrefaçon afin d'identifier les spécificités techniques des produits contrefaits
- Intensifier les campagnes de contrôle sur les produits contrefaits (saisie et destruction)
- Renforcer la coopération dans ce domaine

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6. Information et sensibilisation des différents intervenants

- Mener des actions d'information et de sensibilisation, au profit du grand public, sur les effets néfastes des flux informels et leur impact sur le plan social (perte d'emploi…) en collaboration avec la profession et l'organisation de défense du consommateur
- Aider la profession à mieux appréhender les réglementations nationales et étrangères et mettre à leur disposition un support d'information favorisant son adhésion au plan gouvernemental de lutte contre les flux informels
- Participation aux foires spécialisées pour informer le public sur les dangers et risques éventuels que peuvent présenter certains produits issus de la contrefaçon ou de la piraterie pour la santé et la sécurité des consommateurs

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7. Renforcer la coopération internationale

- Échange d'expériences avec les pays voisins en matière de lutte contre le commerce informel (stages de formation, séminaires...)
- Mise en place d'un groupe d'experts douaniers spécialisés en matière de contrôle et de lutte contre la fraude pour l'échange d'informations et l'initiation d'action commune de lutte contre la contrebande sous ses diverses formes
- Réduction des mesures de protection par la révision périodique de la tarification douanière selon les accords bilatéraux

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IV. RÔLE DE LA DGCEE EN TANT QU'AUTORITÉ DE LA CONCURRENCE FACE À L' ACTIVITÉ INFORMELLE

1. L'autorité de la concurrence a plusieurs missions

- Gérer la politique des prix
- Surveiller le fonctionnement du marché
- Contrôler la transparence des transactions

pratiques illégales
pratiques déloyales
} soumises à contrôle

2. L'autorité doit assurer un environnement concurrentiel

- Cadre juridique de plus en plus renforcé
- Encadrement de l'activité par des dispositifs réglementaires diversifiés

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IV. RÔLE DE L' AUTORITÉ DE CONCURRENCE FACE À L' ACTIVITÉ INFORMELLE

3. Renforcement de la concurrence légale et formelle

- Libéralisation du commerce
  - suppression des obstacles
  - suppression des autorisations
  - déprotection de l'économie (démantèlement tarifaire)
- Assurer l'augmentation de l'offre par la régulation et l'importation pour empêcher la spéculation informelle
- Développement des dispositifs d'intégration du secteur informel dans le secteur formel :
  - programme de mise à niveau
  - octroi des subventions et crédits
  - aménagement des zones et locaux

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IV. RÔLE DE L' AUTORITÉ DE CONCURRENCE FACE À L' ACTIVITÉ INFORMELLE

4. Soumettre le secteur à un contrôle :

- contrôle classique de transparence
- contrôle des sources d'approvisionnement
- contrôle de la protection des consommateurs
- contrôle des pratiques anticoncurrentielles

- Ententes éventuelles et obstacles à l'activité
- Ententes de spéculation ou de hausse des prix
- Aucune activité n'est à l'abri de la loi

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CONCLUSION

- Phénomène complexe (économique, social)
- Responsabilité collective dans la lutte contre ce phénomène (profession, associations, médias, administration ...)
- Facteurs et origines multiples
- Nécessité d'un dispositif juridique
- Nécessité de renforcement d'un État de droit qui applique la réglementation dans tous les domaines (aménagement du territoire, municipalités...)

➢ Autorité de la concurrence pour contribuer à la politique d'encadrement de ce phénomène

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ACTION CONCERTEE INITIEE PAR LES OPERATEURS D'UN SECTEUR INFORMEL

Dans le cadre de son plan de développement, la chaine de distribution Promogros, spécialisée dans la vente au détail des produits alimentaires a décidé de créer un point de vente dans la ville de Sfax : une grande agglomération économique située au sud du pays.

La direction de Promogros a obtenu des autorités compétentes toutes les autorisations nécessaires pour la construction et l'aménagement du local.

Au moment de l'achèvement des travaux et lorsque la Direction de la chaine concernée a commencé les préparatifs pour l'ouverture de son point de vente, les petits commerçants ont jugé que l'implantation d'une grande surface à Sfax serait de nature à compromettre leurs activités et à réduire leurs chiffres d'affaires.

Pour se défendre, ces commerçants ont introduit des requêtes auprès des autorités régionales pour exprimer leurs oppositions catégoriques à l'ouverture d'une grande surface.

Plusieurs raisons ont été évoquées pour argumenter leurs positions, tels que le non respect de la surface réglementaire ou les pratiques de prix bas pour les produits homologués et ont impliqué l'organisation professionnelle régionale dans cette démarche.

La direction de Promogros a essayé de répondre à tous les reproches pour éviter toute réaction qui puisse gêner les autorités de la région soumise à d'énormes pressions.

Les autorités régionales ont contacté le Ministère du Commerce et de l'Artisanat -autorité compétente sur le plan réglementaire- pour résoudre ce problème.

La DGCEE, en tant qu'autorité de concurrence, est intervenue au motif que le comportement des commerçants prouve l'opposition à l'implantation d'une grande surface et constitue un obstacle à l'accès d'un concurrent sérieux au marché de la distribution au détail et à la concurrence dans le secteur.

Considérant qu'une telle réaction est contraire à la réglementation d'autant plus que l'UTICA régional a parrainé les revendications des commerçants, la DGCEE a fait savoir aux représentants des commerçants que leur comportement constituait une pratique anticoncurrentielle au sens du droit de la concurrence et qu'une telle pratique pourrait être poursuivie et sanctionnée par le Conseil de la concurrence.

Compte tenu de cet avertissement les commerçants ont cessé leurs revendications et le magasin a ouvert ses portes sans aucun problème.

ENTENTES SUR LES PRIX DES VIANDES DANS UN SECTEUR INFORMEL

a) En 2007 et jusqu'au 1er Septembre 2008, les prix des aliments pour bétail ont considérablement augmenté. Avec le prolongement d'une période de sécheresse dans la région du sud de la Tunisie spécialisée dans l'élevage extensive, les éleveurs ne peuvent plus faire face à l'augmentation des frais d'entretien de leur cheptel, et ils se sont mis à s'en débarrasser à des prix très bas.

   En conséquence, les boucheries ont profité de la situation et ont baissé leur prix de vente aux consommateurs et ce contrairement à d'autres régions du nord où les prix ont pu résister à la baisse en raison notamment de la fortes demande dans les grandes agglomérations.

b) Les boucheries installées dans les régions du sud ont constaté qu'ils sont en train de pratiquer des prix inférieurs aux prix moyens Ils se sont entendus sous l'égide du bureau régional de l'UTICA (Union Tunisienne de l'Industrie, du Commerce et de l'Artisanat) pour augmenter leur prix de 500 mil par Kg de viande rouge (agneau et chèvre) pour s'aligner sur les autres régions et rattraper le niveau antérieur des prix.

Constatant cette entente :

c) La Direction Régionale du Commerce a saisi la DGCEE qui a demandé à la Direction régionale du commerce de prouver l'existence d'une entente en cherchant des preuves éventuelles. Après enquête, il s'est avéré que l'UTICA régionale a organisé une réunion sur demande des boucheries en vue de consacrer cette augmentation et a consigné cette entente par un PV.

   La DGCCEE a demandé à l'UTICA régionale d'annuler cette entente par écrit et de revenir sur l'augmentation des prix. Faute de quoi, une ouverture d'enquête serait effectuée en vue de saisir le Conseil de la Concurrence.

   L'UTICA a donné suite à la demande de la DGCEE et l'augmentation des prix a été annulée dans toutes les régions. Les autorités régionales ont salué ce geste et la vigilance de la DGCEE.

ANNEX 1 :

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La DGCEE est intervenue en tant qu'autorité de concurrence, en sachant que le comportement des commerçants prouvait leur opposition à l'implantation d'une grande surface et constituait un obstacle à l'accès d'un concurrent sérieux au marché de la distribution au détail et à la concurrence dans le secteur.

Considérant qu'une telle réaction était contraire à la réglementation d'autant plus que l'UTICA régional avait parrainé les revendications des commerçants, la DGCEE a fait savoir aux représentants des commerçants que leur comportement constituait une pratique anticoncurrentielle au sens du droit de la concurrence et qu'une telle pratique pourrait être poursuivie et sanctionnée par le Conseil de la concurrence.

Compte tenu de cet avertissement, les commerçants ont cessé leurs revendications et le magasin a ouvert ses portes sans aucun problème.

ANNEX 2 :

ENTENTES SUR LES PRIX DES VIANDES DANS LE SECTEUR INFORMEL

a) En 2007 et au1er Septembre 2008, les prix des aliments pour bétail ont considérablement augmenté, conjointement avec le prolongement d'une période de sécheresse dans la région du sud de la Tunisie spécialisée dans l'élevage extensive. Les éleveurs ne pouvant plus faire face à l'augmentation des frais d'entretien de leur cheptel se sont mis à s'en débarrasser à des prix très bas.

   En conséquence, les boucheries ont profité de la situation. Elles ont baissé leur prix de vente aux consommateurs, contrairement à d'autres régions du Nord où les prix ont pu résister à la baisse en raison notamment d'une forte demande de viande dans les grandes agglomérations.

b) Les boucheries installées dans les régions du sud ont constaté qu'elles étaient en trains de pratiquer des prix inférieurs aux prix moyens normaux. Elles se sont entendues sous l'égide du bureau régional de l'UTICA (Union Tunisienne de l'Industrie, du Commerce et de l'Artisanat) afin d'augmenter leurs prix de 500 mil par kg de viande rouge (agneau et chèvre), afin de s'aligner sur les prix pratiqués dans les autres régions et de rattraper le niveau antérieur des prix.

   Constatant cette entente,

c) La Direction Régionale du Commerce a saisi la DGCEE qui lui a demandé en retour de prouver l'existence d'une entente par la recherche d'éventuelles preuves. Après investigation, il s'est avéré que l'UTICA régionale avait organisé une réunion à la demande des boucheries afin d'entériner cette augmentation des prix. Elle a donc sanctionné cette entente par un PV.

   La DGCEE a ensuite demandé à l'UTICA régionale de mettre fin à cette entente par écrit et de revenir sur l'augmentation des prix, faute de quoi une ouverture d'enquête serait effectuée afin de saisir le Conseil de la Concurrence.

   L'UTICA a donné suite à la demande de la DGCEE. L'augmentation des prix a été annulée dans toutes les régions. Les autorités régionales ont salué ce geste et la vigilance de la DGCEE.

SUMMARY OF DISCUSSION

The Chairman for this session, Mr Oprescu, Head of the Romanian Competition Authority, observed that the informal economy is present in all countries, and in some it is a significant problem. The informal economy is sometimes defined as those economic activities that take place 'off the books' – outside the control of the tax administration or outside the reach of official statisticians.

There are at least two important consequences of a large informal economy: (a) lower tax revenues (which, in turn, increases the burden on the formal sector, pushing more firms into the informal sector); and (b) inaccurate statistical data on output, consumption, labour force, and unemployment which result in, inappropriate political decisions. The size of the informal economy differs from country to country, but, according to the Secretariat note[1], the trend is for this sector to grow over time.

I. Introductory Remarks by Guest Speakers

Ms Rita Ramalho (World Bank) stated that informality is costly for competition and for development. Informal firms, because they are not registered, do not have easy access to credit and other forms of finance. This lack of access to credit keeps these firms small; they cannot increase productivity by exploiting economies of scale. In addition, because informal firms do not pay taxes and do not comply with relevant regulations, that can lead to unfair competition with the formal side of the economy.

The World Bank has noted that there is a very strong correlation between the size of the informal sector and the income per capita of the country. Poorer countries tend to have a larger informal sector. This can reduce the growth potential of these countries. These firms tend to be less productive since they do not have access to credit and are less likely to import/export. Furthermore there is a social issue since workers in these industries tend to have less protection than workers in the formal sector.

Ms Ramalho presented a graph showing a correlation between the size of the informal sector and the "ease of doing business". The ease of doing business relates to the time and cost of starting a business, closing a business, transferring property, paying taxes, complying with labour regulations and so on. Data on ten different areas of business regulations are collected and aggregated into a ranking. The results show that the more difficult it is to carry on a formal business the larger the size of the informal sector.

The World Bank carries out an enterprise survey, based on firm level data from a sample of 86 000 firms in 110 countries around the world. One of the questions asked is whether or not the firm operated informally before operating formally. This survey shows that where it is more costly to start a business, firms operate for a longer period in the informal sector before they become formal.

Although there are a number of countries with large informal sectors, many countries are trying to improve their regime for the regulation and operation of businesses. The World Bank Report *Doing Business 2009*, published in September 2008, reported 239 reforms in ten areas of business regulation

[1] See OLIS document DAF/COMP/GF(2009)2. The document is also available at http://www.oecd.org/competition/globalforum

between June 2007 and June 2008, in 113 out of the 181 economies that were covered, particularly in Eastern Europe and Central Asia. This study covers the basic procedures for setting up a small company: informing the government that the company exists, informing the tax authorities so the company can pay taxes; registering its employees, etc. There may be other industry-specific procedures to set up, for example, a chemical plant.

The World Bank has tried to go beyond mere correlations between the size of the informal sector and "ease of doing business" measures to look at causality. In Georgia, for example, there was an increase of 55% in business registration after they simplified the process of starting a business. In Mexico, business registration reforms occurred at different times in different states, giving rise to a natural experiment. In those states that carried out reforms, business registration went up by 5%, employment by 2.8% and prices went down by 1%. Reforms to the process of registering a business enhanced competition and reduced prices.

The Bank currently collects two sets of data. One is the enterprise survey mentioned above (which focuses on formal firms, but is being expanded to informal firms). The second set of data is from five African countries plus Nepal (and, very soon, a few countries in Latin America). This dataset tries to understand the characteristics of the firms in the informal sector, why they are informal, and how they affect competition with the formal sector. Of course, the challenge has been to identify the informal firms since they tend, by definition, to not be registered. This latter dataset has provided some very useful information which will enable researchers to understand better the different issues in the informal sector.

Mr Luis De Mello (Economics Department, OECD) reported on how the issue of informality has arisen in the preparation of the regular country surveys of the OECD member and non-member countries.

Informality takes different forms in different countries. There is not a single definition that would perfectly fit all the different types of informal activities in different countries.

Informality is a multi-dimensional issue, calling for concerted action on many different policy fronts. There is not one single policy action that can solve the problem of informality – instead we need a set of internally consistent, mutually reinforcing policies to achieve the goal of reducing informality. Two policies, in particular, have come up in discussions:

- Product market regulations, and whether those regulations are set in a way that encourages entrepreneurship in the economy; and

- Employment protection legislation.

The OECD collects information on a number of basic indicators of restrictiveness in product market regulation and employment protection legislation (available on the OECD website).

As an example, the latest surveys of Turkey and Mexico dealt with the issue of making employment protection legislation more flexible – including a discussion on lifting restrictions on severance pay in the case of Turkey, and more flexible time allocation arrangements in the case of Mexico. Other surveys, such as those of Portugal and Hungary have also discussed issues of informality arising from a restrictive labour code. Similarly, the OECD's latest work on Poland and Indonesia calls for the liberalisation of labour contracting, to make it easier for firms to hire employees.

Another message to emerge from the surveillance work is the need for better enforcement. One particular issue has to do with the homogeneity of enforcement. Typically countries have an incentive to

focus on large enterprises because there are fewer of them. But, in doing so they create an asymmetry that favours smaller enterprises.

Another issue has to do with the use of informality as an automatic stabiliser. Countries sometimes have an incentive to be more lax on enforcing tax legislation or business regulations in periods of economic distress, to allow small businesses to pass more easily through an economic downturn. The OECD's analysis shows that it is preferable for enforcement to be independent of the position of the economy in the business cycle.

Another point that has come up has to do with the tax burden on labour. The OECD sometimes uses empirical work based on labour market surveys to show that there are some groups of people in the labour market that find it very difficult to get out of informality – typically workers with low skills, on low pay. In other parts of the labour market it is less a matter of segmentation than a matter of self-selection – some people may opt to be informal because they see the benefits of informality as being greater than the costs of going formal. One recommendation that was made in the latest surveys of Brazil, the Czech Republic, Italy and Turkey was to try to reduce social charges for workers on low pay, to target that segment of the labour force where market segmentation seems to be a stronger motive for informality.

One issue that has already been mentioned has to do with access to credit. The owner of an unregistered business can typically only borrow as an individual, which is costlier than borrowing as an enterprise. The OECD has raised with Chile and Brazil policies for making it easier for informal businesses and casual labourers to obtain credit. Allowing businesses that are currently informal to have access to credit, may allow them to operate on a different scale of production.

Sometimes the problem is just one of awareness. Sometimes informal firms are not fully aware of the benefits of going formal. One survey for Latin America showed that people tend to underestimate the benefits – in terms of protection of property rights, of access to credit, of access to labour training programmes, and other programmes that are financed by the government and are restricted to firms in the formal sector. Entrepreneurs tend to focus on the short-terms costs of going formal, such as the costs of compliance with regulations and the costs of paying taxes that are due. The representative of the Secretariat noted that some effort should be put into raising awareness so that firms can start factoring in the longer terms benefits associated with going formal.

The Chairman commented that in some instances the asymmetric enforcement is in the favour of large companies – such as companies which are 'too big to fail'.

Ms Taimoon Stewart (Trinidad and Tobago) drew upon the experience of the Jamaican Fair Trade Commission (FTC) regarding the implications of informality for competition enforcement.

In terms of jurisdiction, the Jamaican FTC can investigate and sanction any business in the economy however small that business may be. However, it does not have the right to deal with the issue of non-compliance with other regulations and any issues of unfair competition that arise from non-compliance. Where the FTC encounters illegality in the course of an investigation, it will engage in advocacy to the relevant government institution to improve the effectiveness of compliance.

Jamaica is a very small economy with a very large informal sector. But competition law remains relevant to both the formal and the informal sector, because there is a lot of trade between these sectors. For example, in some cases there are powerful firms in the economy that buy from the informal sector and can exercise monopsony power. The FTC has a very important role in protecting small players in the economy from anticompetitive behaviour.

In fact, it is possible to find price fixing and barriers to entry in sub-sectors of the informal sector. Parts of the informal sector are controlled by criminal elements. The FTC will not intervene in cases where mafia bosses dictate the price at which a product must be sold – in any case these traders do not have a substantial share of the market and intervening at this level is not safe (due to the power wielded by the mafia).

In predatory pricing investigations, if the defendant is a large informal firm (in Jamaica there are informal firms at all sizes from micro-enterprises to large firms) the FTC will include in its measure of the cost of the product all the costs of meeting the regulatory and tax requirements that would have been paid if the firm was formal.

In abuse of dominance investigations the FTC has great difficulty in calculating the relevant market share where informal firms have a significant share of the product market or geographic market. As other countries have highlighted, there is a lack of data and great difficulty in obtaining adequate information. Surveys are one possible approach; the complainant in the case may be able to give an estimate of the share of the informal sector in that market, but at this point in time, the processes for estimating the share of the informal sector are rudimentary.

There are some clear-cut cases: a market enclave in the inner city communities which do not attract consumers from outside, for example. That may be because the location is perceived to be unsafe, or because there is a lack of recourse if the goods are defective. In another situation, there could be a concern about safety and health in regards to food and pharmaceutical products.

One example of "unfair competition" is in the market for clothing and shoes. Informal commercial importers would bring in products evading customs taxes and compete with small formal businesses with very serious adverse effects for the enterprises in the formal sector. Some would even sell out of their car in front of a formal outlet.

The government of Jamaica has taken measures in the last few years to track down non-compliant firms. They have set up systems to link business activities to the tax registration number and tax payments. Significant penalties are imposed for tax evasion. Directors of firms are now personally accountable for the statutory liabilities of their firms. This has had a tremendous persuasive effect on firms. The larger, more visible, firms in the economy have been registering. In addition, a firm cannot obtain credit or register on the Jamaican stock exchange unless it has a certificate of tax compliance. Also, a tax registration number and an up-to-date tax compliance certificate are mandatory for any transaction with any part of the government, including tendering for a contract, or clearing goods from ports. This does not affect the small micro-enterprises or street vendors who do not need access to credit, or do business with the government.

Mr Siddhartha Mitra (CUTS Intl.) emphasised that there are different shades of informality and the research agenda should take into account these different shades. Informality is a more pressing problem in developing countries. For example, it is estimated that around 90% of the labour force in India is still employed in the informal sector and around 60% of the GDP is produced in the informal sector.

How should we define the informal sector? As a working definition, the informal sector is economic activity which is not administered in any substantial way by the government. This definition is deliberately loose. The informal sector is involved in the following types of activities:

- Distribution and manufacture of banned products;
- Illegal cross-border trading of products otherwise legal;

- Unauthorised internal distribution of services/amenities otherwise legal (for example, in Indian slums, local mafia often illegally tap into the official electricity supply and then run a distribution system themselves, charging for the electricity distributed);

- Production of goods/services not administered by the government (such as the neighbourhood cobbler); and

- Street hawking and vending activities.

In regards to the informal sector and competition, on the one hand the informal sector is quite competitive. Often informal sector firms are small in size, offering undifferentiated products. This might imply a close approximation to the textbook definition of perfect competition (such as vegetable sellers in a market). On the other hand, the surplus earned by each firm is small, so substantial innovation or investment to enhance productivity is unlikely.

The extent of anti-competitive activity within the informal sector is largely unknown. Are there cartels operating inside the informal sector? Are there some firms in the informal sector that dominate other firms? In any case, it is often difficult or impossible to enforce competition law in informal sectors characterised by large numbers of small mobile firms. There is also a lack of records and the problem of non-standard products which cannot be compared across firms.

There is also a risk of unfair competition with the formal sector because informal firms do not comply with certain rules or pay taxes. At the same time, there is a risk of abuse of dominance by large formal firms over the informal sector firms.

From an academic perspective, the co-existence of formality and informality is interesting. Is it due to problems of access to credit for small entrepreneurs? Or is it due to the competitive advantages of informal firms (who do not pay taxes)? Is there an equilibrium number of informal and formal firms?

In order to promote formalisation we need to understand the reasons for the existence of the informal sector: (a) the time and cost of setting up a formal firm; (b) corruption at the entry points to the formal sector; (c) inadequate benefits from formality (such as access to credit); and (d) too high costs of formality such as high tax rates on formal firms.

One solution to speeding up the process of registering a formal firm is to adopt a "single window" system. In developing countries there is often a problem of corruption in the civil service, particularly in clerical jobs where officials might pay a large amount of money to secure the position. Providing easier and better access to credit, and lowering tax rates can encourage firms to become formal.

II. Competition between Informal and Formal Firms

The Chairman asked whether formal and informal firms compete in the same market – either the same product market or geographic market. Also, is competition from the informal sector harmful or beneficial?

Tunisia noted that the informal sector in Tunisia has flourished over the last few years. The informal sector in Tunisia has become a concern for economic policymakers because it undermines the formal sector. The reasons are the same as those already mentioned. The Government of Tunisia must take measures to limit the informal sector for three reasons: to protect the national economy, to protect the consumer, and to maintain the social balance.

Several steps have been taken to fight informality. Firstly, legislation has been strengthened and increased resources for enforcement have been given to the public administration. Second, there has been a move to improve the environment for the exercise of formal commerce. Finally, there is an on-going fight against counterfeiting and piracy which are important sources of income for the informal sector. In this regard, there is a need for international co-operation since many counterfeit or sub-standard products are sourced from overseas, particularly from Asian countries. Informality is a complex economic and social phenomenon. The fight against informality is not the responsibility of a single entity. Several departments and ministries must cooperate in order to fight against informal activity.

Tunisia described two competition cases. The first involved an agreement between small meat distributors in an isolated region to increase their prices. This was a region which had experienced drought and the price of cows had fallen. The distributors signed an agreement organised by the region's professional body, increasing prices by EUR 0.5/kg. The Ministry of Commerce found out about this unjustified increase in price and asked the local businesses (including the professional body) to stop this cartel. They signed a new agreement cancelling the increase in prices.

The other case concerned a region where the opening of a supermarket threatened to put local small retailers out of business. The local retailers filed a petition with the regional authorities, asking them to prevent the opening of the supermarket. Ultimately, the relevant government Ministry authorised the opening of the supermarket and told the regional authorities that they did not have the right to intervene.

Romania described a case involving the bread market, involving both informal and formal producers. The informal bread producers were mostly small bakeries located in rural areas, catering to a rather specific and unsophisticated category of customers. Even if the formal players allege that a large portion of the market is affected by unfair competition from the informal sector, they do not seem to be in any threat of exiting the market – there is very little price competition between formal and informal bread producers due to differences in the geographic market served by each.

Moreover bread is a basic product and its demand is traditionally inelastic. An increase in prices would slightly lower sales but would likely generate a slight increase in total revenues. The Romanian competition authority felt that price agreements may occur in the bread market but only between formal producers.

Regarding cooperation between the national competition authorities and the tax authorities, the Competition Council has always considered that dialogue between authorities is very beneficial. The competition authority conveys data on informal activities and any helpful suggestions that it might have on fighting such informalities to the tax authorities and other interested authorities. However the tax authorities have little information that could be of help in competition investigations.

Mongolia is in the process of implementing significant reforms to move from a centrally-planned economy to a market-oriented economy. During the time that the state controlled the meat production business, only two or three state-run meat processing plants were operating in the country. From 1990, pastures, livestock and some processing plants were privatised. That opened opportunities for nomadic herdsmen to sell their product to the market. At the same time, the supply chain that was operating well under the centrally-planned economic system, ceased to function. This gave rise to the informal economy mentioned in the submission.

The current situation is that nomadic herdsmen supply the domestic market while the meat processing plants are more focused on export markets. Nomadic herdsmen cannot access the export market due to the lack of sanitary controls and the large quantities of documentation required to export. In this case, market segmentation allows both formal and informal firms to survive.

III. Competition Law Enforcement Issues

Bulgaria presented a merger case, involving a cement producing company (which also produced concrete) and another company producing ready-mix concrete. In Bulgaria there are five cement producing plants owned by three companies. It turned out to be difficult to compute the market shares of the merging companies in the ready-mix concrete market due to the presence of producers which were unaccounted for in official statistics.

To address this problem the Bulgarian competition authority attempted to assess the size of the market using calculations of the sales of inert materials (e.g. sand and aggregate) and cement sold to concrete producers. However, in respect of sales of inert materials there was a large informal sector, so the competition authority decided to base the assessment of market share on sales of cement to concrete producers alone. All producers of cement were asked to submit their data. Based on this assessment and evaluation the Bulgarian competition authority determined that the notified merger was not likely to have adverse effects on competition in this particular case.

Another element which was taken into account was the fact that there are more than 30 producers of concrete in the relevant geographic market and there were three new entrants in this market the year before the merger, suggesting there were not high barriers to entry to the market.

Peru described a case involving passenger and freight transport. There were allegations that informal trucking and bus companies were evading taxes. There was a national strike by truck companies and intercity passenger transport companies who asked the government to set a minimum price for transport services with the supervision of the tax authority. Although the minimum-price system was not compulsory, the tax authority, the trade unions and the companies' associations recommended to their members the adoption of the minimum price.

The Chamber of Commerce of Lima asked the competition authorities to sanction these companies. The competition authorities considered that, in this case, the existence of collusive pricing practices within the members of the trade unions and the transport companies association were unlikely because it was almost impossible for those companies to set a price. There were a large number of informal firms, so that it was impossible to enforce a collusive agreement. In the end it was determined that consumers would not be affected by this behaviour.

Lithuania presented a cartel case involving the association of taxi companies in the city of Vilnius. At the time of the case, in 2004, the price of taxis in Vilnius was very low – one of the lowest in Europe, in part due to competition from the informal sector. The informal sector could operate at lower cost than the formal taxi firms for two reasons. One was a partial exemption from VAT for firms up to a certain level of turnover, and a loop-hole in the labour regulations which allowed taxi companies to use other companies to hire workers with their own vehicles to avoid obligations under labour law. This put pressure on those companies who were operating formally, paying taxes and regular wages to drivers.

One of the reasons for the cartel was to seek protection from the informal sector. The Lithuanian competition authority did not accept this argument as legitimate justification for a cartel. In this case the problem was inappropriate regulation rather than illegality on the part of the informal firms. The nature of this competition from the informal sector was accepted as a mitigating circumstance and resulted in a decision to impose lower fines on the cartel members

Since that time, the situation in the tax market has improved – all taxi firms in the city are under the same regulation.

Turkey described a case concerning the market for bread and pita. The Turkish federation of bakeries alleged that certain retail markets sold bread at prices below cost and that this harmed the bakeries and caused unfair competition. The federation asked the confederation of Turkish tradesmen and craftsmen to fix the base price for bread. The confederation determined that bread was sold below cost due to informality in the sector, which also resulted in low quality and poor services. The confederation issued a decision fixing the base price for bread to prevent harm to bakeries and protect them from unfair competition.

The confederation argued that by setting a base price, those bakeries that sold below the base price would be revealed to consumers as not conforming to standards. The Turkish competition board emphasised that fixing a base price is not necessary to prevent informality in the market and doing so undermines the benefits that may be obtained by consumers. However, the competition board considered the presence of informality in the sector and the alleged purpose of preventing informality as a mitigating factor while imposing fines.

In the second case undertakings operating as accumulator producers founded a company named Aküder whose organisational charter was regarded by the competition board as a cooperation agreement. It was decided that the founding undertakings violated the competition act by fixing the price of waste accumulators, ensuring that no waste accumulators would be sold by any organisation other than Aküder.

During the investigation the relevant undertakings defended themselves with the argument that even if competition rules were violated the injured undertakings were operating informally (outside the law) and it could not be argued that their rights were infringed. However the competition board rejected these arguments, stating that anti-competitive agreements among competing undertakings to drive out of the market firms operating informally constituted an infringement to competition law. The competition board did not consider arguments based on informality considerations a defence to an infringement of the competition act or as a mitigating circumstance while imposing fines in this case.

The Chairman noted a pattern: that in the presence of a significant informal sector the formal sector often chooses to respond through a price-fixing agreement. That is, they try to solve the problem of loopholes in some laws by breaking or infringing another law, which cannot be accepted.

Chile reported that in 2003, the OECD-IADB peer review of Chilean competition law and policy observed that it would be preferable to codify the principle that “unfair competition” does not violate the Competition Act if the conduct does not harm the market as a whole. This principle, suggested by the peer review report, was included in one of the amendments to the Competition Act in 2004. Since then, unfair competition is deemed to harm free competition, and hence to be a Competition Act infringement, only when it aims at attaining, increasing, or maintaining a dominant position.

In parallel, as initiative of the Congress, the Unfair Competition Law was enacted in 2007. With this new Unfair Competition Act, unfair competition practices that have the purpose of attaining, maintaining or increasing a dominant position shall be analysed by the competition authorities on an exclusionary abuse standard. Unfair competition which does not have the above-mentioned purpose shall be analysed by civil judges and subject to private remedies. The competition tribunal, in an educational role, has continued to help civil judges in the definition of unfairness standards.

Competition law enforcement does not take into account whether a firm is formal or informal. Having said this, however, tax evasion or other unlawful activity that may permit a company a cost advantage which cannot be reproduced by the rest of the actual or potential competitors of the specific industry, may be considered for the purpose of the competition law as a part of predatory or discriminatory scheme that

may be challenged as an unfair competition conduct aiming at obtaining or maintaining a dominant position.

IV. Informality and Economic Growth

The Chairman observed that there are conflicting views on the impact that the informal sector has on economic growth. On the one hand, a decrease in the informal sector would mean higher tax revenues to the state, which could allow higher public spending on infrastructure and services, resulting in economic growth. On the other hand, however, there are studies that show that most of the money which is earned in the informal economy is immediately spent in the official economy, resulting in higher consumption, indirect taxation and again higher revenues to the state budget.

Egypt recalled the negative correlation between the ease of doing business and the size of the informal sector. The ease-of-doing business in Egypt was ranked as 114 out of the 181 countries surveyed. In addition there is a cultural and social mindset in Egypt that causes small businesses to stay away from regulatory requirements and authorities.

The delegate noted that they see the informal sector as a primary cause of inefficiency in the economy as a whole. For example in the milk market in Egypt, 80% of the market is informal. This is a deterrent to serious investment in this industry.

Furthermore, informal firms like to stay small and be "off the radar" of the authorities. This constitutes a barrier to potential growth as well as to mergers and acquisitions between small and medium enterprises in Egypt.

Egypt believes that moving these informal companies into the formal sector would allow GDP to be measured more accurately, as well as increasing opportunities for franchising, mergers and acquisitions, growth, exports and imports.

How can the informal sector be eliminated? It is important to build trust between the informal sector and the government. The experience with personal tax payment in Egypt is relevant. The government started a media campaign convincing people that by building trust with them they can file their own tax report without any investigation and probing. This resulted in a big increase in the tax revenue for the government in the last two or three years. Something similar in the media could play a significant role in encouraging firms to become formal.

V. Advocacy

Ukraine noted the consensus that the size of the informal economy depends on the quality of government policy particularly in the areas of tax and regulation. In any case, the fight against the shadow economy should be a fight against the shadow and not against the economy.

What can the competition authority do to reduce the shadow economy? The Anti-Monopoly Committee of Ukraine acts in two ways. First it has the right to give input on draft government legislation. Every year it considers between 2 and 3000 legislative proposals and in almost 300 cases the AMC gives comments and objections often to prevent the establishment of rules which would raise barriers to entry. In addition, every year the committee bodies take action against anticompetitive decisions by central and regional authorities, who impose additional pressures on businesses through increasing paperwork, increasing administrative charges, and increasing requirements to carry out unnecessary services. These practices are treated as an abuse of dominant position by government agencies.

The competition authority cannot eliminate the informal sector alone because several factors contribute to the phenomenon. It is impossible to measure the extent to which competition enforcement activity helps to diminish the shadow economy, but it prevents it from growing. According to expert opinion, the informal sector in Ukraine has not grown over the last four years. This is not only due to the activity of the AMC but it is a result of different branches of the government working together on this problem.

Romania focused on one anti-competitive aspect of the taxi regulatory regime that directly led to the rise of informal activity in taxi services: the imposition of a ceiling on the number of licences to be issued by each jurisdiction. The Competition Council saw this as a barrier to entry that needed to be removed. There were extensive discussions between the Competition Council, the relevant authorities and the association of taxi providers. The arguments that were presented in favour of limits on licences included certain objective factors such as the traffic conditions in big cities, the degree of pollution, and the need to encourage the use of less polluting means of transportation, together with the need to balance the ratio between supply and demand and the availability of parking spaces for taxis.

The Competition Council proposed to allow the limitation on licences in big cities where heavy traffic might justify it, and to remove such limitation as soon as those traffic problems could be addressed. This was supported by local authorities in small towns who agreed that limiting the licences was not justified. Pollution considerations could be addressed on a national level by setting standards for taxi vehicles. In any case, pollution considerations are not relevant since the ratio of taxis to the total number of vehicles on the roads is small. Similarly, the Competition Council did not take into consideration the arguments about the ratio between supply and demand, arguing that this balance should not be maintained artificially, but rather should be decided by normal market mechanisms.

It was argued that licences were needed to fight informality. The Competition Council agreed, noting that the introduction of a compulsory licensing requirement for taxi services did reduce informality in this sector; however, the limitation imposed on the number of licences issued in every jurisdiction did not. In fact, many taxi drivers who would otherwise be eligible for a licence operate informally to earn enough revenue to pay for a licence, while they are on the waiting list.

Bulgaria stated that in 2005 the Bulgarian Commission for the Protection of Competition performed a sector enquiry into three related markets: the market for milled wheat, the market for flour and the bread market. The enquiry revealed that there is a substantial grey economy operating in these three markets. According to the legal rules concerning VAT at that time, not all traders were obliged to register for VAT, only those who exceeded an annual turnover of EUR 25 000/year. According to the CPC, this exemption facilitated the existence of the grey economy – particularly, small bakeries who were not reporting their real turnover and paying the appropriate taxes.

The CPC also advised the associations of bread producers to be more active in their fight against the grey economy in the sector, and to report alleged violations to the competent authority (usually the tax authorities). The CPC also appealed to the organisations of bread producers to be stricter in their observance of the rules of competition, since there had previously been experience with price fixing in the sector. In recent years, however, the CPC successfully prosecuted a cartel case against three associations of bread producers.

VI. General Discussion

Gabon noted that the rise in the informal sector in Gabon is due, in part, to the liberalisation of the economy. The liberalisation of entry, following the introduction of the competition law, has resulted in substantial new entry in several sectors of the economy. While the formal sector of the economy generally

offers products or services of a certain safety and quality, the products and services from the informal sector, on the other hand, are high-risk. For example, in the pharmaceutical sector most informal-sector products are counterfeit and put the consumers' health at risk. The same problems have arisen in the market for cosmetic products and the market for sports equipment. For this reason, the administration responsible for competition has pursued policies such as strengthening border controls. The competition and consumer services work with customs services to control the importation of these products.

South Africa emphasised that immigration regulations often inhibit the transition from informal to formal sector work. In many countries, illegal immigrant or refugee communities do not have the right to work in the country, despite being well resourced and often quite well educated. They, therefore, operate in the informal sector, without the option of converting to being formal.

An OECD study has recently confirmed that South Africa has very high barriers to entry into the formal sector, yet there is a very low level of informal sector activity – the opposite of the thesis presented earlier. This low level of informal sector activity arises because of the way in which South African cities were planned under apartheid – which results in no organic interaction between the rich and poor communities. The same outcome arises in some other cities – those people who have been forced into the poor communities, do not get into the formal sector because there is no formal sector employment for them. Instead they do nothing. Informal sector activity thrives most strongly in circumstances of economically mixed neighbourhoods where the people with the labour to sell have got people to sell their labour or the fruits of their labour to. Contrary to the thesis here that is most anxious about the conversion of the informal sector into the formal sector, the delegate noted that he would be quite happy if in South Africa there was more opportunity to get into the informal sector, which at least gives these people a first step onto the lowest rung of the ladder; and then indeed the concern to convert those operators into formal sector operators is a valid concern because if they cannot get on to the first rung, they will never get on to the second rung.

Zambia mentioned a case in which they found that the complainants themselves could not comply with the law. Would it be the duty of the competition authorities once they have encountered a case of informal trade being to facilitate formality, by, for example, encouraging them to register to the relevant patent registration office or even assisting them with registering with the tax authorities?

Alan Fels from Consumers International noted that there are two ways of looking at this problem of informality. The first, which has been emphasised, is that the informal sector is a problem, for all of the reasons that have been mentioned. The second is just the opposite: that it is the formal sector that is the problem, due to corruption, harm to competition, and establishment of monopolies through licensing and other arrangements. The informal sector can be viewed as reducing the harm that arises from anti-competitive arrangements in the formal sector, particularly in developing countries. The informal sector, in particular, is typically an engine of job creation.

Professor Fels noted that, although the emphasis in the Secretariat paper is on the fact that the informal sector is a problem, the policy conclusions are appropriate. He raised a question about the optimal degree of enforcement of the law both in the formal sector and informal sector, particularly when one is enforcing bad laws. Restrictions on competition, such as monopolies in, say, electricity production, prevent smaller scale operators with small scale generation from operating. The informal sector may allow less-well-off consumers to participate in the market, who would otherwise be cut out by higher-priced formal monopolies.

Finally, the informal sector may play a role in offsetting a trend to concentration in large retailers. Policies such as improving credit facilities, cutting the cost of licensing, simplifying business registration, and allowing retail co-operatives may strengthen the position of the informal sector in retail competition.

Morocco opened a debate on the informal sector five years ago. Several meetings were held under the auspices of the competition authority. People from the informal sector were invited to try to find solutions to the problem. The conclusion was that there is not one single solution for the whole of the informal sector, but there are specific solutions for each activity which makes up the informal sector.

In the transport sector, the informal sector developed because it had lower costs than the formal sector. The competition authority proposed certain policies such as tax measures and easier access to credit for all operators in the transport sector. In the end, all the operators in the informal sector have integrated into the formal sector as a result of this action. The transport sector has developed and costs have reduced for consumers.

A delegate from the United States noted that some of the phenomena that have been discussed at the roundtable might also arise in large metropolitan areas of developed countries, particularly those areas featuring significant populations that suffer from economic disadvantage or have questionable status under immigration laws and therefore do not routinely participate in the mainstream of economic life.

The delegate noted that they have been pursuing two policies to address this problem of informality. One of those policies involves preliminary discussions with large cities to determine if they might be interested in engaging in the equivalent of a 'regulatory audit' to identify where needless barriers to entry or certification requirements might impede efforts by individuals with low incomes to register, to gain the full benefits of legal protections that come to formal companies.

The second policy involves improving the information flows in these economically-disadvantaged communities. For a variety of reasons, these communities do not tend to interact with public officials. Instead, the delegate spoke of the need to work through a variety of community groups, church groups, community associations, and schools to learn more about the types of obstacles that impede the movement of those with limited means into the formal sector.

VII. Concluding Comments from Guest Speakers

Mr Siddhartha Mitra noted that there is a need to tackle informality on a sector-by-sector basis. In India 90% of the labour force is involved in the informal sector. If there was an economy-wide move to formalise overnight there would be enormous social unrest. Moreover there would be little to gain. In the absence of regulation, an informal firm faces the same regulatory obligations as a formal firm. Instead, he advocated concentrating on sectors where there are large informal firms and large market failures.

He also noted the lack of standard terminology. Different speakers used different definitions of the informal economy – the shadow economy, the illegal economy, small firms which pay taxes, or firms which do not observe any rules at all. In order to have a more meaningful discussion in the future there is a need to standardise terminology.

Competition law enforcement is easier in sectors where there are strong anti-competitive tendencies. Where there are a large number of firms, as in the informal sector, competition law enforcement becomes very difficult. The link between informality and economic growth is not very clear. Where informality is in low value activities such as distribution perhaps it would do no harm, but in sectors where the value added is huge and economies of scale are useful, formality would be more useful.

Taimoon Stewart emphasised that the informal sector creates a demand for goods and services in the formal sector – not just as final consumers but as intermediate consumers, which contributes to the growth of larger firms. In India it is common for women to be involved in sewing products at home which are then sold by formal firms. This reduces the costs of the formal sector. The informal sector works for the benefit of the formal economy at times.

Luis De Mello asked whether there is a level of informality which is good for economic efficiency. This is an empirical question. Another question is whether or not people may get stuck in a vicious circle of informality and low productivity. If governments or authorities want to be more permissive of informality, they should consider the amount of mobility between the formal and informal sectors. Many empirical studies show that there is actually not much mobility for particular segments of the labour force, for particular types of enterprises, in particular sectors of the economy.

Another question relates to how much money countries should put into enforcement? That depends on the root causes of informality – is it a matter of lack of enforcement, or is it a matter of obstacles to going formal? This, also, is an empirical question that depends on country specifics. But the countries where informality is most prevalent are also those where capacity constraints tend to be most severe. In that case a better design of incentive structures for formality may actually be more cost effective for those countries.

Ms Rita Ramalho observed that informality is both a problem and a solution. In a lot of developing countries the informal sector is the biggest employer so, in a sense, it provides an employment solution for those workers. But on the other hand, it is also a problem, because people employed in the informal sector are not necessarily there by choice – the workers in the informal sector do not have access to social protection schemes like social security, the consumers of the products of the informal sector have no guarantee of the quality of the product and the economy as a whole might not be growing to its full potential because a large part of the economy is in a less productive sector.

The question is how can we encourage firms to move from one sector to the other. There is no overnight solution and the goal of having no informal sector is unrealistic. We should focus on rules that encourage firms to be part of the formal sector. Those rules should apply to all firms, regardless of size. If small firms are exempt from some rules, to make it easier for them to enter the system, these small firms later face barriers to their growth.

The Chairman concluded by quoting from the paper prepared by the Secretariat which states that:

> "apparently only a few competition authorities have successfully used enforcement tools to tackle competition concerns involving the informal economy and therefore it seems that competition authorities should mainly focus on competition advocacy as part of wider government initiatives regarding the informal economy".

As Fred Jenny has said, referring to competition authorities, "we may not be as important as we think we are".

COMPTE RENDU DE LA DISCUSSION

Le Président de la session, M. Oprescu, chef de l'autorité roumaine de la concurrence, indique que l'économie informelle est présente dans tous les pays et qu'elle pose un problème sensible dans certains d'entre eux. L'économie informelle est parfois définie comme l'ensemble des activités dites « hors livre », qui échappent au contrôle du fisc ou ne sont pas accessibles aux statisticiens officiels.

L'existence d'une économie informelle importante a au moins deux conséquences graves : (a) un manque à gagner pour le fisc (ce qui alourdit par là-même le fardeau supporté par le secteur formel et pousse davantage d'entreprises vers le secteur informel) et (b) des statistiques inexactes sur la production, la consommation, la population active et le chômage, qui se traduisent par des décisions politiques inadaptées. La taille de l'économie informelle varie d'un pays à un autre, mais d'après la note du Secrétariat[1], ce secteur tend à s'étendre avec le temps.

I. Remarques liminaires des orateurs invités

Mme Rita Ramalho (Banque mondiale) indique que l'existence d'une économie informelle nuit à la concurrence et au développement. N'étant pas immatriculées, les entreprises informelles n'accèdent pas facilement au crédit et à d'autres formes de financement. Ce manque d'accès au crédit contraint ces entreprises à rester petites car il les empêche d'améliorer leur productivité grâce à des économies d'échelle. En outre, le fait que les entreprises informelles ne paient pas d'impôts et ne respectent pas la règlementation applicable peut donner lieu à une concurrence déloyale vis-à-vis de l'économie formelle.

La Banque mondiale a fait observer qu'il existe une corrélation très forte entre la taille du secteur informel d'un pays et son revenu par habitant. Les pays plus pauvres tendent à avoir un secteur informel plus développé. Cela peut réduire le potentiel de croissance de ces pays. Les entreprises informelles ont tendance à être moins productives car elles n'ont pas accès au crédit et sont moins susceptibles d'importer et/ou d'exporter. Un problème d'ordre social se pose également car les travailleurs de ces secteurs sont en général moins protégés que ceux du secteur formel.

Mme Ramalho présente un graphique faisant apparaître une corrélation entre la taille du secteur informel et la facilité de faire des affaires. La facilité de faire des affaires dépend des délais et du coût nécessaires pour créer une entreprise, fermer une entreprise, transférer un bien, payer des impôts, se conformer à la règlementation du travail, etc. Des données relatives à 10 différents aspects de la réglementation des activités commerciales ont été recueillies et regroupées afin d'établir un classement. Les résultats montrent que plus il est difficile de gérer une entreprise formelle, plus le secteur informel est étendu.

La Banque mondiale réalise une enquête sur les entreprises à partir de données recueillies auprès d'un échantillon de 86 000 entreprises réparties dans 110 pays dans le monde. L'une des questions posées est celle de savoir si l'entreprise opérait ou non de manière informelle avant d'opérer de manière formelle.

[1] Voir sur OLIS le document DAF/COMP/GF(2009)2. Ce document est également disponible à l'adresse http://www.oecd.org/competition/globalforum

Cette enquête montre que plus la création d'une entreprise est coûteuse, plus les entreprises opèrent longtemps dans le secteur informel avant de passer dans le secteur formel.

Même si un certain nombre de pays ont un important secteur informel, beaucoup de pays cherchent à améliorer leurs prescriptions légales en matière de réglementation et d'exploitation des entreprises. Le rapport *Doing Business* de la Banque mondiale publié en septembre 2008 a recensé 239 réformes dans 10 différents domaines de la réglementation des activités commerciales de juin 2007 à juin 2008, dans 113 des 181 économies couvertes, et notamment en Europe de l'Est et en Asie centrale. Cette étude couvre les procédures élémentaires à suivre pour créer une petite entreprise : signaler à l'administration centrale l'existence de l'entreprise, en aviser les autorités fiscales afin que l'entreprise puisse payer des impôts, immatriculer ses salariés, etc. D'autres procédures spécifiques à certains secteurs peuvent exister, par exemple pour créer une usine chimique.

La Banque mondiale a tenté d'aller au-delà de l'établissement de simples corrélations entre taille du secteur informel et mesures de la facilité de faire des affaires, et s'est penchée sur les liens de causalité. En Géorgie, par exemple, les immatriculations d'entreprises ont augmenté de 55 % après une simplification du processus de création d'entreprise. Au Mexique, des réformes relatives à la création d'entreprises ont été introduites dans différents États à différents moments, constituant ainsi un véritable observatoire naturel. Dans les États qui ont mené des réformes, les immatriculations d'entreprises ont augmenté de 5 %, l'emploi de 2,8 %, tandis que les prix ont chuté de 1 %. Les réformes apportées au processus d'immatriculation des entreprises ont stimulé la concurrence et fait baisser les prix.

La Banque collecte actuellement deux séries de données. L'une concerne l'enquête auprès des entreprises mentionnée ci-dessus (axée sur les entreprises formelles, et désormais étendue aux entreprises informelles). La deuxième série de données provient de cinq pays africains plus le Népal (et très prochainement, quelques pays d'Amérique latine). Elle vise à définir les caractéristiques des entreprises du secteur informel, à comprendre pourquoi ces entreprises sont informelles et à déterminer comment elles affectent la concurrence dans le secteur formel. Tout le défi a bien sûr consisté à identifier les entreprises informelles puisque ces dernières tendent, par définition, à ne pas être immatriculées. Cet ensemble de données a apporté des informations très utiles qui permettront aux chercheurs de mieux comprendre les différents aspects du secteur informel.

M. Luis De Mello (Département des affaires économiques de l'OCDE) explique comment la question de l'informalité a fait son apparition dans la préparation des études régulièrement publiées sur les pays membres et non membres de l'OCDE.

L'informalité prend une forme différente selon les pays. Il n'existe pas de définition unique qui reflèterait parfaitement la totalité des types d'activités informelles qui existent dans les différents pays.

La question de l'informalité est pluridimensionnelle et appelle une action concertée sur différents fronts. Une seule et unique initiative des pouvoirs publics ne peut suffire à résoudre le problème de l'informalité. Nous avons en revanche besoin d'un ensemble de stratégies internes cohérentes qui se renforcent mutuellement pour parvenir à réduire l'informalité. Deux thématiques ressortent plus particulièrement des discussions :

- les règlementations relatives aux marchés de produits et la question de savoir si ces réglementations sont conçues de manière à encourager l'entrepreneuriat dans l'économie ; et

- la législation sur la protection de l'emploi.

L'OCDE collecte des informations concernant un certain nombre d'indicateurs de base sur les restrictions inhérentes à la réglementation des marchés de produits et à la législation sur la protection de l'emploi (disponibles sur le site Internet de l'OCDE).

Par exemple, les dernières études économiques de la Turquie et du Mexique ont traité de l'assouplissement de la législation relative à la protection de l'emploi. Elles ont abordé la question de la levée des restrictions sur le versement d'indemnités de licenciement en Turquie et celle de l'assouplissement des dispositifs d'aménagement du temps de travail au Mexique. D'autres études, comme celle du Portugal ou de la Hongrie, ont aussi examiné certains problèmes d'informalités que peut induire un code du travail restrictif. De la même façon, les derniers travaux de l'OCDE sur la Pologne et l'Indonésie appellent à la libéralisation des contrats de travail en vue de faciliter l'emploi de salariés par les entreprises.

Un autre message ressort du travail de surveillance réalisé, à savoir, la nécessité de mieux appliquer la loi, et notamment de l'homogénéité de son application. En règle générale, les pays sont plus enclins à orienter leurs efforts sur les grandes entreprises car elles sont moins nombreuses, mais ce faisant, ils créent une asymétrie en faveur des entreprises plus petites.

Une autre question est celle du recours à l'informalité en tant que stabilisateur automatique. Les pays voient parfois un intérêt à se montrer plus laxistes dans l'application de la législation fiscale ou de la réglementation des activités commerciales en périodes de difficultés économiques afin de permettre aux petites entreprises de surmonter plus facilement un ralentissement de l'économie. L'analyse de l'OCDE montre qu'il est préférable que l'application de la loi se fasse indépendamment de la position de l'économie dans le cycle conjoncturel.

Est également soulevé le problème du poids de la fiscalité du travail. L'OCDE utilise parfois des travaux économétriques réalisés à partir d'études du marché du travail pour montrer qu'il est très difficile pour certains groupes de personnes sur le marché du travail de sortir de l'informalité (il s'agit en général de travailleurs peu qualifiés et peu rémunérés). Pour d'autres catégories de travailleurs de ce même marché, il s'agit moins d'une segmentation que d'un libre choix. Certains préfèrent, en effet, rester informels parce qu'ils considèrent que les avantages de l'informalité priment face aux coûts que représente le passage au secteur formel. Les dernières études du Brésil, de l'Italie, de la République tchèque et de la Turquie préconisaient notamment une réduction des charges sociales sur les bas salaires afin de cibler la partie de la population active pour laquelle la segmentation du marché semble expliquer davantage l'informalité.

Un autre problème déjà mentionné a trait à l'accès au crédit. En règle générale, le propriétaire d'une entreprise non immatriculée peut uniquement emprunter à titre personnel, ce qui est plus onéreux que d'emprunter en qualité d'entreprise. L'OCDE a mis en avant avec le Chili et le Brésil des politiques visant à faciliter l'accès au crédit pour les entreprises informelles et les travailleurs occasionnels. Donner aux entreprises actuellement informelles la possibilité d'obtenir des crédits peut leur permettre de passer à une échelle de production différente.

Le problème se résume parfois à un manque d'information. Les entreprises informelles ne sont pas toujours pleinement au fait des avantages liés au passage dans le secteur formel. Une étude sur l'Amérique latine a montré que les individus tendent à sous-estimer ces avantages en termes de protection des droits de propriété industrielle, d'accès au crédit, d'accès aux programmes de formation professionnelle ou à d'autres programmes financés par les deniers de l'État et réservés aux entreprises du secteur formel. Les chefs d'entreprises ont tendance à porter toute leur attention sur les coûts immédiats que suppose le passage au secteur formel, comme le coût de respect de la réglementation ou encore le paiement des impôts dus. Le représentant du Secrétariat note qu'un effort de sensibilisation devrait être mené afin que les

entreprises puissent commencer à tenir compte des avantages à plus long terme liés au passage dans le secteur formel.

Le Président fait valoir que, dans certains cas, l'application asymétrique de la loi favorise les grandes entreprises, telles que celles qui sont « trop grandes pour faire faillite ».

Mme Taimoon Stewart (Trinité-et-Tobago) relate l'expérience de l'autorité de la concurrence de la Jamaïque (la Fair Trade Commission – FTC) concernant les implications de l'informalité sur l'application du droit de la concurrence.

En termes de compétence, la FTC jamaïcaine est habilitée à enquêter sur toutes les entreprises qui participent à l'économie et à les sanctionner, si petites soient-elles. En revanche, sa compétence ne s'étend pas aux questions de non-respect d'autres règlementations ni aux problèmes de concurrence déloyale induits par un défaut de conformité. Lorsque la FTC détecte une situation irrégulière au cours d'une enquête, elle entreprend une mission de conseil auprès des instances gouvernementales concernées afin de mieux faire respecter la réglementation.

La Jamaïque est une très petite économie avec un secteur informel très étendu. Cependant, le droit de la concurrence s'y applique à la fois au secteur formel et au secteur informel, car de nombreux échanges ont lieu entre ces deux secteurs. Par exemple, dans certains cas, des entreprises puissantes de l'économie formelle s'approvisionnent auprès du secteur informel et peuvent ainsi exercer un pouvoir de monopsone. La FTC joue un rôle très important en matière de protection des petits acteurs économiques face aux comportements anticoncurrentiels.

De fait, il est possible de trouver des accords de fixation des prix et des barrières à l'entrée dans des sous-secteurs du secteur informel. Certains pans de l'économie informelle sont contrôlés par des organisations criminelles. La FTC n'intervient pas dans les affaires où des chefs mafieux dictent le prix auquel un produit doit être vendu. En tout état de cause, ces négociants ne disposent pas d'une part de marché significative et il serait risqué d'intervenir à ce niveau (du fait du pouvoir exercé par la mafia).

Dans les enquêtes sur les manœuvres d'éviction, si le défendeur est une grande entreprise informelle (en Jamaïque, il existe des entreprises informelles de toute taille, allant de la micro-entreprise à la grande entreprise), la FTC comptabilisera dans son évaluation du coût du produit tous les coûts inhérents au respect des prescriptions réglementaires et fiscales qui auraient été payés si l'entreprise était formelle.

Dans les enquêtes sur les positions dominantes, la FTC a beaucoup de mal à calculer la part de marché en cause lorsque des entreprises informelles disposent d'une part significative du marché du produit ou du marché géographique. Comme d'autres pays l'ont souligné, on manque de données et il est très difficile d'obtenir des informations valables. Les sondages constituent l'une des approches possibles ; le plaignant d'une affaire peut être en mesure de donner une estimation de la part du secteur informel dans le marché en cause, mais aujourd'hui, les processus d'évaluation de la part revenant au secteur informel sont encore rudimentaires.

Certains cas sont très clairs, comme par exemple celui d'une niche de marché dans des quartiers de centre-ville, qui n'attirent pas de clients de l'extérieur. Ce cas de figure peut s'expliquer par la mauvaise réputation des lieux en termes de sûreté ou par l'absence de recours en cas de marchandises défectueuses. Dans d'autres situations, des produits alimentaires ou pharmaceutiques peuvent poser des problèmes de santé et de sécurité.

Le marché de l'habillement et des chaussures présente un exemple de « concurrence déloyale ». Il semble que des importateurs commerciaux informels introduisent des produits en échappant aux droits de douane pour concurrencer les petites entreprises formelles, ce qui leur porte un très grave préjudice.

Certains de ces importateurs iraient même jusqu'à vendre dans leurs voitures devant des points de vente formels.

Ces dernières années, les autorités jamaïcaines ont adopté certaines mesures afin de débusquer les entreprises qui ne respectent pas la législation. Elles ont mis en place des systèmes qui établissent un lien entre les activités commerciales, le numéro d'immatriculation fiscale et les paiements d'impôts. Des amendes substantielles sont imposées en cas de fraude fiscale. Les administrateurs des entreprises sont désormais tenus personnellement responsables du respect des obligations légales de leur entreprise. Cette évolution a eu un effet de persuasion considérable sur les entreprises, poussant les plus grandes et les plus visibles de l'économie à s'immatriculer. De plus, une entreprise ne peut obtenir un crédit ou s'inscrire à la bourse jamaïcaine sans un quitus fiscal. De même, un numéro d'immatriculation fiscale et un quitus fiscal à jour sont obligatoires pour toute transaction avec un organe du gouvernement, et notamment pour répondre à un appel d'offres ou dédouaner des marchandises débarquées sur un port. Cela ne concerne ni les micro-entreprises ni les vendeurs ambulants qui n'ont pas besoin de crédits et ne font pas affaire avec l'administration publique.

M. Siddhartha Mitra (CUTS International) souligne que la notion d'informalité comporte plusieurs nuances et que le programme de recherche devrait en tenir compte. L'informalité pose un problème plus préoccupant dans les pays en développement. On estime par exemple qu'en Inde, environ 90 % de la population active travaille toujours dans le secteur informel et qu'environ 60 % du PIB provient de ce même secteur.

Comment définir le secteur informel ? Du point du vue du travail, le secteur informel est l'ensemble de l'activité économique qui ne donne pas lieu à une véritable administration par les pouvoirs publics. Cette définition se veut délibérément vague. Le secteur informel est présent dans les types d'activités suivants :

- distribution et fabrication de produits prohibés ;
- commerce transnational illicite de produits licites ;
- distribution interne non autorisée de services/commodités licites (par exemple, dans les bidonvilles indiens, il arrive souvent que la mafia locale procèdent à un raccordement illicite sur les lignes électriques officielles pour alimenter un système de distribution parallèle et vendre l'électricité ainsi distribuée) ;
- production de biens/services non administrés par le gouvernement (comme le cordonnier de proximité) ; et
- colportage et vente ambulante.

Pour ce qui est du rapport entre concurrence et secteur informel, dans un sens, le secteur informel apparaît très concurrentiel. Les entreprises du secteur informel sont souvent de petite taille et proposent des produits indifférenciés. D'où, peut-être, une concurrence proche de la définition de la concurrence parfaite qu'énoncent les manuels (comme les vendeurs de légumes sur un marché). En revanche, chaque entreprise fait un maigre bénéfice, ce qui compromet toute possibilité d'investissement ou d'innovation substantiels propres à améliorer la productivité.

L'ampleur des pratiques anticoncurrentielles dans le secteur informel est en grande partie méconnue. Des ententes ont-elles lieu au sein du secteur informel ? Des entreprises du secteur informel sont-elles en position de domination vis-à-vis d'autres entreprises ? Dans tous les cas, il est souvent difficile, voire

impossible, de faire appliquer le droit de la concurrence dans les secteurs informels qui se caractérisent par un grand nombre de petites entreprises mobiles. Viennent s'y ajouter le manque d'écritures comptables et le problème des produits non standardisés qui ne peuvent être comparés d'une entreprise à l'autre.

Le secteur informel présente aussi un risque de concurrence déloyale parce que les entreprises informelles ne respectent pas certaines règlementations ou ne paient pas d'impôts. Dans le même temps, il existe un risque d'abus de position dominante des grandes entreprises formelles sur les entreprises du secteur informel.

D'un point de vue théorique, la coexistence de la formalité et de l'informalité est intéressante. L'informalité est-elle due aux problèmes d'accès au crédit pour les petits entrepreneurs ? S'explique-t-elle plutôt par les avantages concurrentiels des entreprises informelles (qui ne paient pas d'impôts) ? Existe-il un point d'équilibre entre le nombre d'entreprises formelles et celui des entreprises informelles?

Afin de promouvoir le passage des entreprises à l'économie formelle, nous devons d'abord comprendre les raisons qui expliquent l'existence du secteur informel : (a) les délais et les coûts nécessaires à la création d'une entreprise formelle ; (b) la corruption aux points d'entrée du secteur formel ; (c) les avantages inappropriés de la formalité (comme l'accès au crédit) et (d) le niveau trop élevé des coûts liés à la formalité, comme les taux d'imposition élevés appliqués aux entreprises formelles.

L'une des solutions pour accélérer le processus de constitution d'une entreprise formelle consiste à adopter un système « à guichet unique ». Dans les pays en développement, il existe souvent un problème de corruption dans l'administration, et plus particulièrement dans les emplois de bureau, où les fonctionnaires doivent parfois payer d'importantes sommes d'argent pour conserver leur poste. Faciliter et améliorer l'accès au crédit et abaisser les taux d'imposition peut encourager les entreprises à passer dans l'économie formelle.

II. Concurrence entre entreprises informelles et formelles

Le Président se demande si les entreprises formelles et informelles se font concurrence sur le même marché (de produit ou géographique). Par ailleurs, la concurrence du secteur informel est-elle préjudiciable ou bénéfique ?

Le délégué de la Tunisie note que le secteur informel dans son pays a prospéré ces dernières années. Il tend à poser un problème aux responsables de la politique économique car il met en péril le secteur formel. Les raisons constatées sont les mêmes que celles déjà invoquées. Les autorités tunisiennes doivent prendre des mesures en vue de limiter le secteur informel pour trois raisons : protéger l'économie nationale, protéger le consommateur et maintenir l'équilibre social.

Plusieurs initiatives ont été lancées afin de lutter contre l'informalité. Premièrement, la législation a été renforcée et des ressources accrues ont été allouées aux administrations publiques afin de faire appliquer la loi. Deuxièmement, des mesures ont été prises pour améliorer l'environnement dans lequel s'effectue le commerce formel. Enfin, les pouvoirs publics luttent en permanence contre la contrefaçon et le piratage, qui constituent d'importantes sources de financement pour le secteur informel. Une coopération internationale est nécessaire à cet égard, car de nombreux produits contrefaits ou non conformes aux normes proviennent de l'étranger, et notamment des pays d'Asie. L'informalité est un phénomène économique et social complexe. La lutte contre l'informalité ne relève pas de la responsabilité d'une seule entité. Plusieurs départements et ministères doivent coopérer afin de lutter contre les activités informelles.

La Tunisie relate deux affaires de concurrence. La première a impliqué un accord passé entre des petits distributeurs de viande d'une région isolée dans le but d'augmenter leurs prix. Cette région avait connu une sécheresse et le prix des vaches avait chuté. Ces distributeurs ont signé un accord sous l'égide

de l'organisme professionnel de la région qui prévoyait d'augmenter les prix de 0.50 EUR/kg. Le ministère du Commerce a eu connaissance de cette hausse des prix injustifiée et a demandé aux entreprises locales (y compris à l'organisme professionnel) de mettre fin à cette entente. Les parties prenantes ont donc signé un nouvel accord annulant cette hausse de prix.

L'autre affaire concernait une région où l'ouverture d'un supermarché menaçait l'activité du petit commerce local. Les petits commerçants locaux ont déposé une requête auprès des autorités régionales, leur demandant d'empêcher l'ouverture du supermarché. Finalement, le ministère concerné a autorisé l'ouverture du supermarché et indiqué aux autorités régionales qu'elles n'avaient pas le droit d'intervenir.

La Roumanie évoque une affaire concernant le marché du pain et impliquant à la fois des producteurs formels et informels. Les producteurs informels de pain étaient principalement des petites boulangeries situées dans des zones rurales et fournissaient une clientèle plutôt bien circonscrite et peu exigeante. S'il est vrai que les acteurs formels de ce marché prétendent qu'une grande partie du marché est affectée par la concurrence déloyale du secteur informel, ils ne semblent toutefois pas du tout menacés de devoir quitter le marché. Il y a, en effet, très peu de concurrence sur les prix entre les producteurs formels et informels de pain en raison des différences géographiques des marchés que chacun d'eux desservent.

De plus, le pain est un produit de base et sa demande est traditionnellement inélastique. Une hausse des prix entraînerait une légère baisse des ventes, mais se traduirait probablement par une légère hausse des recettes totales. De l'avis de l'autorité roumaine de la concurrence, des ententes sur les prix pourraient intervenir sur le marché du pain, mais seulement entre les producteurs formels.

S'agissant de la coopération entre les autorités nationales de la concurrence et les autorités fiscales, le Conseil de la concurrence a toujours défendu les effets très bénéfiques du dialogue entre ces instances. L'autorité de la concurrence communique des données sur les activités informelles et fait part à l'administration fiscale et à d'autres autorités concernées de toute éventuelle suggestion utile quant à la manière de lutter contre ces manifestations de l'informalité. Les autorités fiscales disposent, en revanche, de peu d'informations susceptibles de faire progresser les enquêtes en matière de concurrence.

La Mongolie procède actuellement à d'importantes réformes pour passer d'une économie à planification centrale vers une économie de marché. À l'époque où l'État contrôlait le secteur de la production de viande, il existait seulement deux ou trois usines publiques de transformation de la viande dans le pays. À partir de 1990, les pâturages, le cheptel et certaines usines de transformation ont été privatisés. Cela a permis aux gardiens nomades de bétail de vendre leurs produits sur le marché. Parallèlement, la chaîne d'approvisionnement, qui fonctionnait bien du temps de l'économie centralement planifiée, a cessé de fonctionner, d'où l'apparition de l'économie informelle mentionnée dans la contribution mongole.

Aujourd'hui, les gardiens nomades approvisionnent le marché intérieur, tandis que les usines de transformation de la viande s'orientent davantage sur les marchés d'exportation. Les gardiens nomades de bétail ne peuvent accéder au marché d'exportation faute de contrôles sanitaires et compte tenu de la grande quantité de documents exigés pour l'exportation. Dans le cas présent, la segmentation du marché permet la survie des entreprises du secteur formel et du secteur informel.

III. Questions d'application du droit de la concurrence

La Bulgarie décrit une affaire de fusion impliquant une entreprise de fabrication de ciment (également productrice de béton) et une entreprise produisant du béton prêt-à-l'emploi. La Bulgarie compte cinq cimenteries détenues par trois sociétés. Il s'est avéré difficile de calculer les parts de marché des

entreprises participant à la fusion sur le marché du béton prêt-à-l'emploi du fait de la présence de producteurs non recensés dans les statistiques officielles.

Pour pallier ce problème, l'autorité bulgare de la concurrence a tenté d'évaluer la taille du marché en calculant les ventes de matériaux inertes (sable et granulats) et de ciment aux producteurs de béton. Toutefois, les ventes de matériaux inertes reposaient en grande partie sur le secteur informel, si bien que l'autorité de la concurrence a décidé de baser l'évaluation de la part de marché sur les seules ventes de ciment aux producteurs de béton. Il a été demandé à tous les producteurs de ciment de communiquer leurs données. À partir de cette évaluation et de l'estimation qui a suivi, l'autorité bulgare de la concurrence a conclu que la fusion notifiée n'était pas susceptible de porter préjudice à la concurrence dans ce cas particulier.

Un autre élément a été pris en compte, à savoir le fait que le marché géographique considéré compte plus de 30 producteurs de béton et que trois nouveaux venus sont entrés sur le marché l'année précédant la fusion, ce qui témoigne d'une 'absence de véritable barrière à l'entrée sur ce marché.

Le Pérou rapporte une affaire impliquant le transport de fret et de passagers. Selon certaines allégations, des entreprises informelles de transport par bus et par camion se soustrayaient à l'impôt. Une grève nationale a été menée par les sociétés de transport par camion et de transport interurbain de passagers, demandant au gouvernement de fixer un tarif minimum pour les services de transport et aux autorités fiscales de procéder à des contrôles. Bien que le système de prix plancher n'ait pas été rendu obligatoire, le fisc, les syndicats et les associations d'entreprises ont recommandé aux leurs membres de ces associations d'adopter le tarif minimum.

La Chambre de commerce de Lima a demandé aux autorités de la concurrence de sanctionner ces entreprises. Les autorités de la concurrence ont estimé qu'en l'espèce l'existence de pratiques collusoires en matière de fixation de prix entre les membres des syndicats et des associations de sociétés de transport était peu plausible car il était presque impossible pour ces entreprises de s'entendre sur un prix. Vu le nombre élevé d'entreprises informelles, il était impossible de mettre en œuvre un accord d'entente. Finalement, il a été jugé que les consommateurs ne seraient pas affectés par ce comportement.

La Lituanie présente une affaire d'entente impliquant l'association des sociétés de taxis de la ville de Vilnius. Au moment des faits, en 2004, le prix des taxis à Vilnius était très bas – l'un des plus bas en Europe – en partie en raison de la concurrence du secteur informel. Le secteur informel pouvait, en effet, travailler à des coûts moindres que les sociétés de taxis formelles, et ce, pour deux raisons. L'une était une exemption partielle de TVA pour les entreprises en-deçà d'un certain seuil de chiffre d'affaires. L'autre était une faille du droit du travail, qui permettait aux sociétés de taxi de faire appel à d'autres sociétés pour employer de la main-d'œuvre travaillant avec ses propres taxis afin d'échapper à certaines obligations prescrites par le droit du travail. Ces éléments ont lourdement pesé sur les entreprises du secteur formel qui paient des impôts et versent des salaires fixes aux chauffeurs.

L'une des raisons à l'origine de l'entente était la volonté de se protéger du secteur informel. L'autorité lituanienne de la concurrence a rejeté cet argument, estimant qu'il ne pouvait valablement justifier une entente. Dans cette affaire, le problème ne venait pas tant de l'illégalité des entreprises informelles que du caractère inadéquat de la réglementation. La nature de cette concurrence du secteur informel a été retenue en tant que circonstance atténuante, ce qui a permis d'alléger les amendes infligées aux membres de l'entente.

Depuis, la situation du marché des taxis s'est améliorée : toutes les sociétés de taxis de la ville sont soumises à la même réglementation.

La Turquie fait état d'une affaire concernant le marché du pain et de la pita. La Fédération turque des boulangers a allégué que certains marchés de détail vendaient du pain à perte, ce qui nuisait aux boulangeries et constituait une concurrence déloyale. La Fédération a demandé à la Confédération des commerçants et artisans turcs de fixer le prix de base du pain. La Confédération a estimé que du pain était vendu à perte du fait de la présence d'une activité informelle dans le secteur, laquelle se traduisait également par une piètre qualité et par des services médiocres. La Confédération a décidé de fixer le prix de base du pain afin d'éviter tout préjudice pour les boulangeries et de protéger ces dernières face à une concurrence déloyale.

La Confédération a argué qu'en fixant un prix de base, les boulangeries qui vendaient en dessous du prix de base révèleraient au consommateur qu'elles ne respectaient pas les normes en vigueur. Le Conseil turc de la concurrence a souligné que la fixation d'un prix de base n'était pas nécessaire pour prévenir l'existence d'activités informelles sur le marché et que cette pratique réduisait certains avantages dont le consommateur pouvait bénéficier. Néanmoins, le Conseil de la concurrence a pris en considération la présence d'activités informelles dans le secteur ainsi que l'objectif allégué de prévenir cette informalité en tant que circonstance atténuante pour décider du montant des amendes qu'il a imposées.

La Turquie présente une deuxième affaire, dans laquelle des fabricants de batteries ont créé une société baptisée Aküder. Le Conseil de la concurrence a jugé que la structure organisationnelle de cette société constituait un accord de coopération. Il a été établi que les entreprises à l'origine de la création de cette société enfreignaient la loi sur la concurrence en fixant le prix de collecte des batteries usagées, ce qui leur permettait de veiller à ce qu'aucune batterie usagée ne soit vendue par aucune entreprise autre que Aküder.

Au cours de l'enquête, les entreprises incriminées se sont défendues en arguant que même si les règles de la concurrence étaient effectivement violées, les entreprises auxquelles il serait ainsi fait grief opéraient de manière informelle (c'est-à-dire en marge de la loi) et que l'on ne pouvait donc pas invoquer une quelconque atteinte à leurs droits. Le Conseil de la concurrence a néanmoins rejeté ces arguments, expliquant que les accords anticoncurrentiels entre entreprises concurrentes visant à écarter du marché des entreprises qui opèrent de manière informelle constituaient une infraction au droit de la concurrence. Dans cette affaire, le Conseil de la concurrence n'a retenu aucun argument fondé sur les questions d'informalité, que ce soit pour justifier une infraction au droit de la concurrence ou pour faire valoir une circonstance atténuante lors de la fixation des amendes.

Le Président relève une constante : en présence d'un important secteur informel, le secteur formel choisit souvent de répondre par un accord de fixation de prix. En d'autres termes, il tente de résoudre le problème des lacunes de certaines lois en enfreignant ou en violant une autre loi, ce qui ne saurait être toléré.

Le Chili explique qu'en 2003, l'examen par les pairs OCDE-BID du droit et de la politique de la concurrence du Chili a indiqué qu'il serait préférable de codifier le principe selon lequel la « concurrence déloyale » ne constitue pas une violation de la Loi sur la concurrence si le comportement ne nuit pas au marché dans son ensemble. Ce principe, suggéré par le rapport de l'examen par les pairs, a été repris dans l'une des modifications apportées à la Loi sur la concurrence en 2004. Depuis, la concurrence déloyale est réputée porter préjudice à la libre concurrence, et de ce fait, constituer une infraction à la Loi sur la concurrence seulement si elle vise à atteindre, renforcer ou maintenir une position dominante.

Parallèlement, à l'initiative du Congrès, la Loi sur la concurrence déloyale a été édictée en 2007. Avec cette nouvelle loi, les pratiques déloyales qui visent à acquérir, maintenir ou renforcer une position dominante doivent être examinées par les autorités de la concurrence en tenant compte de la présence ou non de pratiques d'exclusion. Un cas de concurrence déloyale qui ne poursuivrait pas le but susmentionné

doit être examiné par des juges civils et peut faire l'objet d'une action privée. Dans son rôle pédagogique, le tribunal de la concurrence a continué d'apporter son aide aux juges civils pour définir les critères servant à distinguer ce qui est déloyal de ce qui ne l'est pas.

L'application du droit de la concurrence ne tient pas compte du caractère formel ou informel d'une entreprise. Cela dit, l'évasion fiscale ou d'autres pratiques illégales qui confèrent à une entreprise un avantage pécuniaire ne pouvant être reproduit par ses concurrents effectifs ou potentiels sur le même secteur d'activité peuvent être considérées, aux yeux de la loi sur la concurrence, comme des éléments d'une pratique d'exclusion ou de discrimination et faire l'objet de poursuites en tant que pratiques concurrentielles déloyales visant à obtenir ou maintenir une position dominante.

IV. Informalité et croissance économique

Le Président fait observer que les opinions divergent concernant l'impact du secteur informel sur la croissance économique. D'un côté, une réduction du secteur informel entraînerait une hausse des recettes fiscales de l'État, ce qui pourrait permettre des dépenses publiques plus importantes en infrastructures ou en services et se traduirait par une augmentation de la croissance économique. D'un autre côté, cependant, certaines études montrent que la plupart des sommes récoltées dans l'économie informelle sont immédiatement réinjectées dans l'économie formelle, ce qui fait augmenter la croissance, le montant des impôts indirects et, encore une fois, les recettes du budget de l'État.

L'Égypte rappelle la corrélation négative entre la facilité de faire des affaires et la taille du secteur informel. Sur 181 pays étudiés, l'Égypte a été classée au 114^{e} rang pour la facilité de faire des affaires. De plus, pour des raisons culturelles et sociales, la mentalité égyptienne veut que les petites entreprises ne se conforment pas aux prescriptions légales et se tiennent à distance des autorités.

Le délégué fait observer que l'Égypte considère le secteur informel comme la première cause d'inefficience de l'ensemble de son économie. Par exemple, le marché égyptien du lait dépend à 80 % du secteur informel, ce qui décourage tout investissement sérieux dans ce secteur d'activité.

En outre, les entreprises informelles sont enclines à rester petites et invisibles des autorités. Cela entrave leur croissance potentielle et fait obstacle à toute fusion ou acquisition entre petites et moyennes entreprises en Égypte.

L'Égypte estime que faire passer ces entreprises informelles dans le secteur formel permettrait de mesurer le PIB avec plus de précision et multiplierait les possibilités de franchisage, de fusions, d'acquisitions et les opportunités de croissance, d'exportations et d'importations.

Comment éliminer le secteur informel ? Il faut instaurer un rapport de confiance entre le secteur informel et les pouvoirs publics. L'expérience de l'Égypte en matière de paiement de l'impôt sur les personnes physique est intéressant à cet égard. Les autorités ont lancé une campagne médiatique visant à convaincre les Égyptiens que, dans le cadre d'une confiance mutuelle, ils pouvaient remplir eux-mêmes leur déclaration d'impôts sans enquête ni vérification. Cela a entraîné une importante augmentation des recettes fiscales de l'État au cours des deux ou trois dernières années. Une campagne médiatique similaire pourrait jouer un rôle clé pour encourager les entreprises à devenir formelles.

V. Action de sensibilisation

L'Ukraine souligne l'existence d'un consensus autour de l'idée que la taille de l'économie informelle dépend de la qualité des politiques publiques menées, notamment dans les domaines fiscaux et réglementaires. Dans tous les cas, la lutte contre l'économie souterraine devrait être une lutte contre la dimension souterraine de l'économie et pas contre l'économie elle-même.

Que peuvent faire les autorités de la concurrence pour réduire l'économie souterraine ? La Commission antimonopole ukrainienne agit sur deux tableaux à la fois. Premièrement, elle est habilitée à apporter sa contribution aux projets de loi du gouvernement. Chaque année, elle examine 2 000 à 3 000 propositions de lois et, dans près de 300 cas, elle formule des commentaires et des objections, souvent pour empêcher la mise en place de règles qui constitueraient des barrières à l'entrée. Deuxièmement, chaque année, les organes de la Commission entament des actions en justice contre certaines décisions anticoncurrentielles des autorités régionales et centrales qui imposent des pressions supplémentaires sur les entreprises en multipliant les formalités, alourdissent leurs charges d'administration et les contraignent à fournir davantage de services superflus. Ces pratiques sont considérées comme un abus de position dominante des administrations publiques.

L'autorité de la concurrence ne peut à elle seule éliminer le secteur informel car plusieurs facteurs contribuent à ce phénomène. S'il est impossible de mesurer à quel point les mesures d'exécution de la loi participent à faire reculer l'économie souterraine, il est néanmoins certain que ces actions empêchent cette économie de progresser. De l'avis des experts, ces quatre dernières années, le secteur informel en Ukraine ne s'est pas étendu. Ce résultat n'est pas seulement celui de l'action menée par la Commission ; c'est aussi le fruit d'un travail conjoint mené sur cette question par différents services du gouvernement.

La Roumanie concentre ses efforts sur un aspect anticoncurrentiel de la réglementation applicable aux taxis qui a directement entraîné une augmentation de l'activité informelle dans les services de taxis : l'imposition d'un quota de licences délivrées par chaque juridiction. Le Conseil de la concurrence y a vu une barrière à l'entrée qui devait être supprimée. Un long débat a eu lieu entre le Conseil de la concurrence, les autorités concernées et l'association de taxis. Parmi les arguments avancés en faveur d'une limitation du nombre de licences figuraient certains facteurs objectifs tels que les conditions de circulation dans les grandes villes, le niveau de pollution, la nécessité d'encourager le recours à des moyens de transport moins polluants, ainsi que celle d'équilibrer l'offre et la demande tout en tenant compte du nombre de places de stationnement disponibles pour les taxis.

Le Conseil de la concurrence a proposé de permettre un numerus clausus de licences dans les grandes villes où la circulation chargée le justifie peut-être, et de retirer ces quotas dès que les problèmes de trafic seraient réglés. Cette proposition a remporté le soutien des autorités locales dans les petites villes qui ont reconnu qu'il était injustifié de limiter le nombre de licences. Les questions de pollution pourraient être traitées à l'échelon national en établissant des normes concernant les véhicules taxis. Dans tous les cas, les préoccupations en matière de pollution ne sont pas pertinentes en l'espèce, car le nombre de taxis rapporté au nombre total de véhicules en circulation est faible. De même, le Conseil de la concurrence n'a pas retenu les arguments concernant le rapport offre/demande, arguant que cet équilibre ne devrait pas être maintenu de manière artificielle, mais résulter plutôt du fonctionnement des mécanismes normaux du marché.

Certains ont affirmé que les licences étaient nécessaires pour lutter contre l'informalité. Le Conseil de la concurrence a partagé cet avis, précisant néanmoins que l'introduction d'une licence obligatoire pour les taxis réduisait effectivement l'informalité dans ce secteur, ce qui n'était pas le cas de la restriction imposée sur le nombre de licences délivrées par chaque juridiction. En fait, de nombreux chauffeurs de taxis qui rempliraient les conditions requises pour l'obtention d'une licence opèrent de manière informelle pendant qu'ils sont sur la liste d'attente afin d'engranger suffisamment de recettes pour acheter une licence.

La Bulgarie indique qu'en 2005 la Commission bulgare pour la protection de la concurrence (CPC) a réalisé une étude de secteur sur trois marchés liés : le marché du blé moulu, le marché de la farine et celui du pain. L'enquête a révélé la présence d'une importante économie parallèle sur ces trois marchés. D'après les prescriptions légales de l'époque en matière de TVA, tous les commerçants n'étaient pas tenus de s'immatriculer pour la TVA, mais seulement ceux dont le chiffre d'affaires annuel dépassait 25 000 EUR.

D'après la CPC, cette exemption a facilité l'émergence de cette économie parallèle, et notamment de petites boulangeries qui ne déclaraient pas leur chiffre d'affaires réel et ne payaient pas les impôts qu'elles auraient dû payer.

La CPC a également conseillé aux associations de producteurs de pain de lutter plus activement contre l'économie parallèle dans ce secteur et de signaler toute infraction alléguée aux autorités compétentes (habituellement l'administration fiscale). La CPC a également invité les organisations de producteurs de pain à respecter plus scrupuleusement les règles de concurrence étant donné les antécédents du secteur en termes de fixation de prix. Ces dernières années, toutefois, la CPC a poursuivi avec succès une association de producteurs de pain dans le cadre d'une affaire d'entente.

VI. Discussion générale

Le Gabon indique que la progression du secteur informel qu'il constate chez lui est due en partie à la libéralisation de l'économie. La libéralisation de l'entrée sur le marché, qui a suivi l'introduction du droit de la concurrence, a donné lieu à de nouvelles entrées importantes dans plusieurs secteurs de l'économie. Alors que le secteur formel de l'économie propose en général des produits et des services d'un certain niveau de sécurité et de qualité, en revanche, ceux qui proviennent du secteur informel présentent d'importants risques. Par exemple, dans le secteur pharmaceutique, la plupart des produits du secteur informel sont contrefaits et mettent en danger la santé des consommateurs. Les mêmes problèmes se sont posés sur les marchés des cosmétiques et des équipements sportifs. C'est pourquoi l'administration en charge des questions de concurrence a pris des mesures telles que le renforcement des contrôles aux frontières. Les services de la concurrence et les services de consommateurs travaillent de concert avec les douanes pour contrôler l'importation de ces produits.

L'Afrique du Sud insiste sur le fait que la règlementation en matière d'immigration empêche souvent le passage du travail du secteur informel au secteur formel. Dans de nombreux pays, les communautés d'immigrés illégaux ou de réfugiés n'ont pas le droit de travailler dans le pays, malgré les moyens matériels dont ils disposent et, bien souvent, un niveau de qualification assez élevé. Par conséquent, ils évoluent dans le secteur informel, sans avoir la possibilité de passer au secteur formel.

Une récente étude de l'OCDE confirme que l'Afrique du Sud présente une très faible activité informelle, malgré des obstacles considérables à l'entrée du secteur formel, ce qui contredit la thèse développée précédemment. Cette faible activité informelle s'explique par la manière dont étaient organisées les villes sud-africaines du temps de l'apartheid, qui ne laissait aucune place aux interactions structurelles entre les communautés riches et les communautés pauvres. Il en est de même pour d'autres villes. Les individus qui ont été cantonnés dans les communautés pauvres ne passent pas dans le secteur formel car il n'existe pas d'emploi pour eux dans le secteur formel. Ils ne font donc rien. L'activité informelle se développe mieux dans des environnements où il existe une mixité économique de voisinage et où ceux dont le travail est à vendre ont à leur portée ceux à qui ils peuvent vendre leur travail ou le fruit de leur travail. Contrairement à la thèse défendue ici, selon laquelle la priorité est la conversion du secteur informel au secteur formel, le délégué fait remarquer qu'il serait ravi qu'il y ait en Afrique du Sud davantage de possibilités d'entrer dans le secteur informel. Cela procurerait au moins aux personnes concernées un moyen d'accéder au premier échelon de l'échelle sociale. Il conviendrait ensuite de s'atteler à la conversion de ces acteurs du secteur informel en acteurs du secteur formel. En effet, s'ils ne peuvent accéder au premier échelon, ils ne parviendront jamais au deuxième.

La Zambie évoque une affaire dans laquelle il s'est avéré que les plaignants eux-mêmes n'étaient pas en mesure de respecter la loi. Incomberait-il aux autorités de la concurrence, lorsqu'elles ont détecté une affaire de commerce informel, de faciliter le passage vers le secteur formel, par exemple en encourageant

les intéressés à s'immatriculer auprès du registre des brevets et des sociétés pertinent, ou même en les assistant dans leurs formalités d'immatriculation auprès de l'administration fiscale ?

Alan Fels, de Consumers International, fait valoir que ce problème d'informalité pouvait être considéré de deux manières différentes. La première, qui a été largement évoquée, selon laquelle le secteur informel est un problème, pour toutes les raisons qui ont été mentionnées. La deuxième, diamétralement opposée, selon laquelle le problème est le secteur formel à cause de la corruption, des entraves à la concurrence et de la constitution de monopoles via la concession de licences et d'autres structures. On peut considérer que le secteur informel atténue les préjudices imputables à des structures anticoncurrentielles dans le secteur formel, notamment dans les pays en développement. En règle générale, le secteur informel joue un rôle particulièrement moteur dans la création d'emplois.

Le Professeur Fels indique que bien que le Secrétariat ait mis l'accent sur le caractère souvent problématique du secteur informel, ses conclusions en termes de politique publique sont pertinentes. Le Professeur Fels se demande quel est le niveau optimal d'application de la loi à la fois dans le secteur formel et dans le secteur informel, notamment lorsqu'il s'agit d'appliquer de mauvaises lois. Les entraves à la concurrence, comme les monopoles dans, par exemple, la production d'électricité, écartent les opérateurs de moindre envergure qui produisent à petite échelle. Le secteur informel peut permettre à des consommateurs moins aisés de participer au marché, alors qu'ils en seraient privés en raison des prix plus élevés imposés par les monopoles du secteur formel.

Enfin, le secteur informel peut contribuer à atténuer la tendance à la concentration observée parmi les grands distributeurs. Les politiques publiques visant par exemple à améliorer les facilités de crédit, à diminuer les coûts de délivrance d'agréments, à simplifier l'immatriculation des entreprises et à autoriser les coopératives de de vente au détail peuvent renforcer la position du secteur informel dans le cadre de la concurrence dans la vente au détail.

Le Maroc a ouvert un débat sur le secteur informel il y a cinq ans. Plusieurs réunions ont été tenues sous l'égide de l'autorité de la concurrence. Des personnes du secteur informel y ont été invitées pour tenter de trouver des solutions au problème. Il a été conclu qu'il n'existait pas une solution unique pour l'ensemble du secteur informel, mais une batterie de solutions spécifiques à chacune des activités qui composent le secteur informel.

Dans le secteur des transports, le secteur informel s'est développé en raison de ses coûts inférieurs à ceux du secteur formel. L'autorité de la concurrence a proposé certaines solutions comme des mesures fiscales et une amélioration de l'accès au crédit pour tous les opérateurs du secteur du transport. En fin de compte, cette action a abouti à ce que tous les opérateurs du secteur informel sont passés dans le secteur formel. Le secteur des transports s'est développé et les prix facturés au consommateur ont diminué.

Un délégué des États-Unis fait observer que certains des phénomènes qui ont été examinés pendant la table ronde pouvaient aussi survenir dans de grandes zones métropolitaines des pays développés, et notamment dans des zones où d'importants groupes de la population sont défavorisés sur le plan économique ou ont un statut incertain aux yeux des lois sur l'immigration et ne participent donc pas régulièrement à la vie économique traditionnelle.

Le délégué indique que son pays mène deux stratégies afin de résoudre ce problème d'informalité. L'une d'entre elles implique de discuter préalablement avec les grandes agglomérations afin de déterminer si ces dernières seraient disposées à s'engager dans un « audit de la réglementation » visant à définir quelles barrières à l'entrée ou quelles prescriptions en matière de certification sont superflues et sapent peut-être les efforts déployés par des individus aux revenus modestes qui souhaiteraient s'immatriculer et bénéficier pleinement des protections légales dévolues aux entreprises formelles.

La deuxième stratégie consiste à améliorer la diffusion de l'information dans ces communautés défavorisées sur le plan économique. Pour toute une série de raisons, ces communautés tendent à ne pas avoir de rapports avec les agents publics. Pour y remédier, le délégué évoque la nécessité de travailler avec tout un éventail de groupes ou d'associations d'animation sociale, de groupes religieux et aussi avec les écoles afin de mieux connaître les obstacles au passage dans le secteur formel d'individus ayant peu de moyens.

VII. Commentaires de clôture des orateurs invités

M. Siddhartha Mitra fait remarquer qu'il faut traiter le problème de l'informalité secteur par secteur. En Inde, 90 % de la main-d'œuvre travaille dans le secteur informel. Le passage d'un jour à l'autre de toute l'économie dans le secteur formel entraînerait une gigantesque agitation sociale. De plus, un tel changement serait peu bénéfique. En l'absence de réglementation, une entreprise informelle est confrontée aux mêmes obligations réglementaires qu'une entreprise formelle. M. Siddhartha Mitra préconise de se concentrer plutôt sur les secteurs où opèrent de grandes entreprises informelles et qui présentent d'importantes défaillances du marché.

Il pointe également du doigt le manque de terminologie normalisée. Différents intervenants ont utilisé des définitions différentes de l'économie informelle (économie souterraine, économie illégale, petites entreprises qui ne paient pas d'impôts ou encore entreprises qui ne répondent à aucune règle). Afin de rendre la discussion plus intelligible à l'avenir, il est nécessaire de normaliser la terminologie.

L'application du droit de la concurrence est plus facile dans les secteurs où l'on constate de fortes tendances anticoncurrentielles. Lorsque les entreprises sont nombreuses, comme c'est le cas dans le secteur informel, l'application du droit de la concurrence est très difficile. Le lien entre informalité et croissance économique n'est pas très clair. L'informalité dans les secteurs d'activité à faible valeur ajoutée comme la distribution n'est peut-être pas préjudiciable, mais dans les secteurs où la valeur ajoutée est considérable et où les économies d'échelle sont utiles, il serait plus judicieux que l'économie soit une économie formelle.

Taimoon Stewart souligne que le secteur informel crée une demande de biens et de services dans le secteur formel. Les acteurs du secteur informel agissent, en effet, non seulement en tant que consommateurs finaux, mais aussi en tant que consommateurs intermédiaires, ce qui contribue à la croissance d'entreprises plus grandes. En Inde, il est courant pour les femmes de faire des travaux de couture à domicile sur des produits vendus ensuite par des entreprises formelles. Cela permet de réduire les coûts du secteur formel. Le secteur informel travaille parfois dans l'intérêt de l'économie formelle.

Luis De Mello demande s'il existe un niveau d'économie informelle bénéfique pour l'efficience de l'économie. C'est là une question empirique. Il faut aussi se demander si oui ou non des individus peuvent être prisonniers d'un cercle vicieux fait d'informalité et de faible productivité. Si les gouvernements ou les autorités souhaitent se montrer plus permissifs face à l'informalité, ils devraient alors prendre en compte le niveau de mobilité entre secteurs formel et informel. De nombreuses études empiriques ont montré qu'il n'existe en fait que peu de mobilité s'agissant de certaines catégories de main-d'œuvre, de certains types d'entreprises et de certains secteurs de l'économie.

Se pose également la question de la quantité d'argent que les pays devraient consacrer à l'application de la loi. Elle dépend des causes profondes de l'informalité : s'agit-il d'une application insuffisante de la loi ou de la présence d'obstacles au passage à l'économie formelle ? Cette question est, elle aussi, empirique et dépend elle-même des caractéristiques de chaque pays. Mais les pays où l'informalité est la plus répandue sont aussi ceux où les contraintes en matière de capacité tendent à être les plus fortes. Dans ce cas, une meilleure conception des structures d'incitation à la formalité peut, finalement, s'avérer plus rentable pour ces pays.

Mme Rita Ramalho souligne que l'informalité est à la fois un problème et une solution. Dans beaucoup de pays en développement, le secteur informel est le plus gros employeur et apporte à ce titre une solution d'emploi à tous ceux qu'il fait travailler. En revanche, il pose également un problème, car les personnes employées dans le secteur informel ne choisissent pas obligatoirement d'y travailler. Ces dernières n'ont, en effet, pas accès aux régimes de protection sociale comme la sécurité sociale, les consommateurs des produits provenant du secteur informel n'ont aucune garantie quant à leur qualité et il se peut que la croissance de l'ensemble de l'économie ne soit pas à la hauteur de son véritable potentiel parce qu'une grande partie de cette dernière appartient à un secteur moins productif.

La question est de savoir comment encourager les entreprises à passer d'un secteur à l'autre. Il n'existe pas de solution immédiate et il serait irréaliste de vouloir éliminer complètement le secteur informel. Il faudrait se concentrer sur les règles qui encouragent les entreprises à rejoindre le secteur formel. Ces règles devraient s'appliquer à toutes les entreprises, quelle que soit leur taille. Si les petites entreprises sont exemptées de certaines règles afin de leur permettre d'entrer plus facilement dans le système, elles sont ultérieurement confrontées à des obstacles à leur croissance.

Le Président conclut en citant le document élaboré par le Secrétariat, qui indique que :

> « Apparemment, rares sont les autorités de la concurrence qui ont réussi à s'attaquer aux problèmes de concurrence impliquant l'économie informelle par des instruments coercitifs et il semble par conséquent que les autorités de la concurrence devraient principalement concentrer leurs efforts sur la sensibilisation à la concurrence *via* des initiatives de grande ampleur des pouvoirs publics visant l'économie informelle ».

Comme l'a déclaré Frédéric Jenny, en faisant référence aux autorités de la concurrence, « nous ne sommes peut-être pas aussi importants que nous l'imaginons ».