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**A CRITICAL ANALYSIS OF HORIZONTAL
COMPETITION IN THE ETHIOPIAN INSURANCE
SECTOR**

**BY
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**School of Law
Bahir Dar University**

JULY, 2021



A CRITICAL ANALYSIS OF HORIZONTAL COMPETITION IN THE ETHIOPIAN INSURANCE SECTOR

Thesis

Submitted in Partial Fulfillment of the Requirements for the Degree of
Masters of Laws (LLM) in Business and Corporate Law at the School of
Law, Bahir Dar University

By

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July, 2021

Thesis approval page

The thesis titled “*A Critical Analysis of Horizontal Competition in the Ethiopian Insurance Sector*” by Abebe Adane is approved for the degree of Masters of Laws (LLM).

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Declaration

I, the undersigned, declare that the thesis comprises my own work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work. I understand that non-adherence to the principles of academic honesty and integrity, misrepresentation/fabrication of any idea/data/fact/source will constitute sufficient ground for disciplinary action by the University and can evoke criminal sanction from the state and civil action from the sources, which have not been properly cited or acknowledged.

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Dedication

I dedicate this work to my mother Atsede Abera whom I lost at the verge of completing this thesis. Mom may your soul rest in paradise!

Acknowledgement

First of all, many thanks to the Almighty God for his providence and support throughout my life.

I would also like to submit my gratitude to my advisor Tegegne Zergaw (Assistant Professor) for his profound scholastic comments and insights in this study. Without your endeavour, the thesis would not have been completed. I thank you, Sir!

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List of Acronyms

AEI	Association of Ethiopian Insurers
BER	Block Exemption Regulation
CEO	Chief Executive Officer
CRM	Customer Relations Management
EU	European Union
EIC	Ethiopian Insurance Corporation
GDP	Gross Domestic Product
ISD	Insurance Supervision Directorate/Division
UNCTAD	United Nations Convention on Trade and Development
SPC	Standardized Policy Terms
SMEs	Small and Medium Enterprises
OECD	Organization for Economic Cooperation and Development
TFEU	Treaty on the Functioning of European Union
NBE	National Bank of Ethiopia
TCCPP	Trade Competition and Consumer Protection Proclamation
R&D	Research and Development

Abstract

The main objective of the study was to assess the horizontal competitive status of insurance companies in Ethiopia. The researcher conducted the study by selecting six insurance companies' v.i.z the Ethiopian Insurance Corporation, Awash Insurance S.C, Nyala Insurance S.C, United Insurance S.C, Nile Insurance S.C, and Zemen Insurance S.C. The study canvassed the horizontal competitive status of Ethiopian insurers in light of commonly known competition variables i.e. price (premium), product variety and use of technology and innovation. Besides, the study assessed the legal framework and practical applications of notorious areas of collaborations (strategic alliances) in the insurance sector. The study found that concerning insurers' competition in premiums, insurers are cutting premiums down and they are in a situation of a price war. Further, Ethiopian insurers provide traditional and identical insurance services and very little effort is made by some insurers to introduce new services to the community. In addition, saving Awash Insurance S.C which employ online claims application and settlement and Nyala Insurance S.C's endeavour to introduce Block Chain Technology to connect the financial operations of all its branches, other feasible technologies like online claims notification and settlement, online sales, digital customer advising and follow up, smart contracts, e-insurance etc. are unknown in the sector. The other point of scrutiny was the legal framework and practical applicability of horizontal collaboration (strategic alliance) among insurers in Ethiopia. Concerning the legal framework, the TCCPP under Article 7(1) (a) adopted a rule of reason standard of analysis that allow competitors to collaborate if technological, efficiency and other pro-competitive gains outweighing the anti-competitive effect are present. Besides, Article 4(2) of TCCPP empowers the Council of Ministers to exempt certain sectors vital for economic development from the ambit of competition law though it enacted no exempting regulation yet. Moreover, the country's competition legal regime does not have a horizontal cooperation guideline. The attached conditions for coordination, "technological, efficiency and other pro-competitive gains" are found sufficient because other vital requirements such as "pass on to consumers", "indispensability", and the "absence of elimination of competition" can be engulfed in the law through interpreting the catch-all phrase "other pro-competitive gains". However, the attached conditions are not cumulative in the TCCPP. Furthermore, the study revealed that Ethiopian insurers are not practically utilizing common areas of horizontal cooperation (strategic alliances) like research and development, information exchange cooperation, and coinsurance saving reinsurance cooperation. Standardization of terms and conditions of insurance policy is not also practised in the sector. However, the NBE supervises insurers to safeguard the interest of consumers in the policy terms and conditions and no standardization is mandatorily required in the sector.

Finally, to escape the existing price war and other competition problems, the study recommends insurers to focus on other competition variables like brand loyalty (reputation), innovation and use of technology and introduction of new insurance services. In addition, insurers in the country are recommended to make strategic alliances. Besides, the study recommends the NBE to come up with a floor premium in consultation with the Association of Ethiopian Insurers. Moreover, actuarial science at its advanced level should also be included in the educational system of the country to solve the dearth of experts. The conditions of coordination in the TCCPP should also be amended to make them cumulative requirements. It also recommends the Council of Ministers to come up with an exemption regulation for the insurance sector or the country needs to have a horizontal cooperation guideline to illuminate areas of coordination. Lastly, the NBE should introduce a coinsurance directive, and information exchange directive, to create a fertile ground for cooperation (strategic alliances) between insurers. The study also recommends the Ethiopian Competition and Consumer Protection Authority to give proper attention to reinsurance cooperation in the country to avoid anti-competitive possibilities.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

The Ethiopian society has been for a long time practising traditional risk transfer systems. *E'dir* which corresponds to the English “burial society or funeral club” that resembles modern life insurance is widely practised to cover funeral costs.¹ Besides, in the northern part of the country “*Medin*” which means “guarantee” was a very common practice of transferring risks.² In the *Fetha Nagast* (the Law of Kings) a contract of sale and purchase would only be complete when another person acceptable to both parties (buyer and seller) is present.³ The third person is named ‘*Medin*’ or ‘*Was*’, who takes the risk of loss or non-conformity, had its roots in the ancient Ethiopian legal tradition.⁴ Meanwhile, the historical genesis of the modern insurance business was closely interwoven with the beginning of the banking business.⁵ In the year 1905, the Bank of Abyssinia, the first modern bank in Ethiopia, served as an agent of a foreign insurance company in the underwriting of marine and fire insurance services.⁶ Thereafter, in 1923, a Swiss insurer Balois set up a branch office in Addis Ababa followed by other European insurance

¹ Eyobed Tibebu Lisanework, Craving for Reform of the Insurance Industry, *Addis Fortune*, Vol.17, No. 897, (27 May, 2017), p.2. Available at<<https://addisfortune.net/columns/craving-for-reform-of-the-insurance-industry/>> [Last accessed on November 24, 2020]. [Hereinafter, Eyobed Tibebu Lisanework, Craving for Reform of the Insurance Industry].

² *Id*, p.1-2.

³ *Ibid*.

⁴ *Ibid*.

⁵ See Melaku Yirdaw, *Banking and Insurance Sectors Development in Ethiopia and its Effect on Economic Growth*, MA thesis, St. Mary's University School of Graduate Studies Institute of Agriculture and Development Studies, Masters of Art in Development Economics, 2019, [Unpublished] p.2. Available<<http://repository.smuc.edu.et/bitstream/123456789/5155/1/MELAKU%20YIRDAW.pdf>>. [Last accessed on May 19, 2021]. [Hereinafter, Melaku Yirdaw, *Banking and Insurance Sectors Development in Ethiopia*].

⁶ *Ibid*. See also Mulugeta Negash and *et al*, Identifying and Analyzing Factors Contributing for Growth of Non-life Insurance Gross Premium a Developing Country Perspective: Case of Insurance Industry in Ethiopia, *Journal of Exclusive Management Science*, 2018, Vol.7, Issue 1, pp.1-15, at p.1. [Hereinafter, Mulugeta Negash and *et al*, Identifying and Analyzing Factors contributing for growth of non-life insurance gross premium].

companies working on an agency basis.⁷ During the Italian occupation (1936-1941), it was only the Italian insurance companies that were in operation in the country.⁸ After the Italians left the country, there were about 18 foreign insurers and one domestic insurer called Imperial Insurance Company.⁹ The study conducted in 1967 found that there were thirty (30) foreign insurance branches and agents and 10 domestic insurers in the country.¹⁰ The insurance business was governed by the Commercial Code until 1970 whence a separate proclamation regulating the insurance sector was promulgated.¹¹ Interestingly, the proclamation established the Insurance Council and Insurance Controller's Office to regulate the insurance business.¹²

Latter, the Dergu regime adopted a socialist ideology that in effect results in the nationalization of all the then 13 insurance companies to form a single state-owned insurance company called the Ethiopian Insurance Corporation.¹³ During this period, free-market principles were suppressed and competition was non-existent.¹⁴ It was only the Ethiopian Insurance Corporation that was the only insurer in the entire insurance market for the next nineteen (19) years.¹⁵ Thus, Dergu's Marxist ideology had an incontestable negative impact on the development, growth and competition of the insurance sector in Ethiopia.¹⁶ Interestingly, following the EPRDF's financial

⁷ See Kahase G.Michael Atsebaha, *Ethiopian Insurance Sector and its Contribution to Economic Growth*, MA thesis, Addis Ababa University College of Business and Economics, MBA Specialize in Financial Services, 2018, [Unpublished]. p.5. Available at <<http://etd.aau.edu.et/bitstream/handle/123456789/12548/Kahase%20Gebremichael.pdf?sequence=1&isAllowed=y>>. Accessed on May 19, 2021. [Hereinafter, Kahase G.Michael, *Ethiopian Insurance Sector and its Contribution to Economic Growth*].

⁸ *Ibid.* See also Melaku Yirdaw, *Banking and Insurance Sectors Development in Ethiopia*, p.2.

⁹ See Melaku Yirdaw, *Banking and insurance sectors development in Ethiopia*, p.2. See Kahase G.Michael, *Ethiopian Insurance Sector and its Contribution to Economic Growth*, p.5

¹⁰ *Ibid.*

¹¹ The government came up with the Ethiopian insurance proclamation No.281/1970. At that time there were "15 licensed domestic insurers, 36 agents, 7 brokers, 3 actuaries & 11 appraisers." See Kahase G.Michael, *Ethiopian Insurance Sector and its Contribution to Economic Growth*, p.5. See also Melaku Yirdaw, *Banking and insurance sectors development in Ethiopia*, *Supra note*, p.2.

¹² *Ibid.*

¹³ Interview with Mr.Yosef Wubshet, Principal Officer, Ethiopian Insurance Corporation (EIC) Human Resource Development, on *the History of Ethiopian Insurance Corporation*, April 11, 2021. See also Melaku Yirdaw, *Banking and Insurance Sectors Development in Ethiopia*, p.2.

¹⁴ See Tibebe Tilahun Tadesse, Understanding the Historical Background of Insurance Sector in Ethiopia: Why a Brand New Vitality Injection is Needed in to Both the General and Long Term Insurance Sales in Ethiopia? pp.1-5. <<https://wisdomccc.wordpress.com/2015/11/02/part-one-of-organic-booster-shot-why-a-brand-new-vitality-injection-is-needed-into-life-insurance-other-long-term-insurance-sales-in-ethiopia/comment-page-1/#comment-15>> [Last accessed May 20, 2021.] [Hereinafter, Tibebe Tilahun, Understanding the Historical Background of Insurance Sector in Ethiopia].

¹⁵ See Hailu Zeleke, *Insurance in Ethiopia: Historical Background, Present Status and Future Challenges*, Master printing press, Addis Ababa, Ethiopia, 2007, p.80. [Hereinafter, Hailu Zeleke, *Insurance in Ethiopia*].

¹⁶ *Ibid.*

sector reform of 1994, private insurance companies began to revive in the market again.¹⁷ Modern insurance business in the country has a long history of establishment (over 110 years) and indeed, Ethiopia was among the first nations in Africa to introduce modern insurance business.¹⁸ The National Bank of Ethiopia is empowered to regulate and supervise insurance business under proclamation No.746/2012.¹⁹ The Insurance Supervision Directorate (ISD) is established to regulate the insurance sector as one directorate of the National Bank of Ethiopia.²⁰ Currently, there are 18 insurance companies (one state-owned and seventeen private) that provide insurance services in the Ethiopian insurance market.²¹ With the opening of 37 new branches in 2019/20, the branch expansion of insurance companies increased to 605 out of which 54.4 % of their branches are situated in Addis Ababa.²² The total capital of all insurance companies is 9.7 billion birrs out of which the share of the government-owned Ethiopian Insurance Corporation is 29.3 per cent, while the remaining seventeen private insurers constitute 70.7 per cent of the total capital.²³ Nonetheless, the Ethiopian insurance sector's development is at its lowest stage in terms of market penetration and contribution to GDP.²⁴

Horizontal competition indicates the rivalry of firms found at the same stage of the production cycle to obtain market power, attract customers, acquire profits and engage in innovation.²⁵ The ultimate aim of competitors is to increase the profit of the firm by attracting customers through the provision of a fair price and better product quality or service. Nowadays horizontal competition is supposed to bring welfare to the general consumer and “productivity and growth”

¹⁷ See Melaku Yirdaw, *Banking and Insurance Sectors Development in Ethiopia*, p.2.

¹⁸ See Tibebe Tilahun, Understanding the Historical Background of Insurance Sector in Ethiopia, pp.1-2. See also Hailu Zeleke, *Insurance in Ethiopia*, pp.75-80.

¹⁹ See Proclamation to Provide for the Insurance Business, 2021, *Federal Negarit Gazeta*, Proclamation No.746, 18th Year, No.57, Article 3 up to Article 10. [Hereinafter, the insurance business proclamation No.746/2012].

²⁰ See The Organizational Structure of the National Bank of Ethiopia (NBE). <<https://nbebank.com/organizational-structure/>>. [Last accessed on May 20, 2021].

²¹ For further details refer the National Bank of Ethiopia (NBE), Annual report 2019/2020, p.41. Available at <<https://nbebank.com/annual-report/>>. [Last accessed on May 19, 2021.]. [Hereinafter, National Bank of Ethiopia, Annual report 2019/2020].

²² *Id.*, pp.38-39.

²³ *Ibid.*

²⁴ See Shimeles Beyene, *Analysis of Market power and Competitiveness of the Ethiopian Insurance Industry*, Master thesis, Addis Ababa University, School of Economics, 2012, p.2. [Unpublished] Available at <<http://etd.aau.edu.et/bitstream/handle/123456789/14912/Shimelis%20Beyene.pdf?sequence=1&isAllowed=y>> Accessed on December 20, 2020. [Hereinafter, Shimeles Beyene, *Analysis of market power and competitiveness of the Ethiopian insurance industry*].

²⁵ See Andrea Lista, *EU Competition Law and the Financial Services Sector*, Informa law from Routledge, New York, USA, 2013, p. 17. [Hereinafter, Andrea Lista, *EU Competition Law and the Financial Services Sector*].

to the competitor companies.²⁶ Competition law strives to safeguard competition among competitors, *inter alia*, through outlawing some sorts of activities between competitors and putting necessary conditional prohibitions on some other types of horizontal restraints among firms.²⁷ Horizontal restraints to competition denote any sort of agreement or arrangements between “rival or potentially rival firms”²⁸ to limit competition in the market.

In the past, the financial sector in general and, indeed, the insurance sector, in particular, was considered as a state monopoly.²⁹ Meanwhile, the trend in the late 20th century onwards reduces the state prerogative in the financial sector while at the same time the role of the private sector began gradually improved.³⁰ This ignited the competition atmosphere and the insurance sector’s competition was seriously taken.³¹ The insurance sector at the international level is one of those sectors prone to anti-competitive horizontal agreements.³² Some of the anti-competitive agreements such as cartels were tolerated in the legal system of some countries to secure, among other things, “industrial stability” and trust.³³ However, as time went on horizontal competition among insurers was believed to bring efficiency and safeguard consumer welfare.³⁴ Consequently, the competition laws of several countries subject the insurance industry to the ambit of competition law and even further penalize horizontal anti-competitive agreements

²⁶ See Kamila Zelga, The Importance of Competition and Enterprise Competitiveness, *World Scientific news*, 2017, No.72, pp.301-306, at pp.301-302. Available at <<http://www.worldscientificnews.com/wp-content/uploads/2017/01/WSN-72-2017-301-306.pdf>> [Last accessed on May 20, 2021]. [Hereinafter, Kamila Zelga, The Importance of Competition].

²⁷ See for example paragraph 2 of the preamble of the current Ethiopian Competition and Consumer Protection Proclamation wherein it is declared that putting in place competition law and other systems is necessary to protect the business community from anticompetitive and unfair market practices and consumers from misleading market conducts.

²⁸ See United Nations Conference on Trade and Development (UNCTAD), Intergovernmental Group of Experts on Competition Law and Policy Consultations and Discussions Regarding Peer Reviews on Competition Law and Policy, *Review of the Model Law, and Studies Related to the Provisions of the Set of Principles and Rules*, Twelfth Session, Geneva, 9-11, July 2012, p.3. [Hereinafter, UNCTAD, *Review of the Model Law*].

²⁹ Harald Espeli, Insurance Cartels and State Policies in Norway (1870s–1990s), *Scandinavian Economic History Review*, 2020, Vol.68, No.3, pp.222-238, at p.223. Available at <<https://www.doi.org/10.1080/03585522.2019.1703802>> [Last accessed on January 20, 2021]. [Hereinafter, H. Espeli, Insurance cartel and state policies in Norway].

³⁰ See Richard Whish and David Bailey, *Competition Law*, 7th edn., Oxford University Press, Oxford, UK, 2012, P.1&3. [Herein after, Richard and David, *Competition Law*].

³¹ See Andrea Lista, *EU Competition Law and the Financial Services Sector*, p.17.

³² See H. Espeli, Insurance Cartel and State Policies in Norway, p. 225.

³³ *Id.*, p.223. The writer found that cartels were encouraged by the government of Norway, Sweden and Finland. *Ibid.*

³⁴ See Orhan M. Çeku and Mentor Q. Shaqiri, Anticompetitive Agreements according to Kosovo’s Law on the Protection of Competition-Case study of the Insurance Market, *Year Book of Antitrust and Regulatory Studies*, 2016, Vol.9, No.13, pp.191-206, at p.223. See also H. Espeli, Insurance Cartel and State Policies in Norway, pp.225-226.

between companies.³⁵ The competitiveness of the insurance industry varies from country to country and the economic development of the country.³⁶ The UNCTAD study revealed that the Insurance sector in developing countries has one major problem that is the prevalence of horizontal anti-competitive practices.³⁷ Inherently, the insurance sector demand some sort of horizontal collaboration like information exchange, coinsurance and reinsurance pools, standardization of contract terms and conditions, research and development coordination, etc. to ward off problems associated with information asymmetry, moral hazard, and adverse selection.³⁸ These collaborations tend to make prices and market conditions of competitors transparent that in turn contribute to the existence of horizontal anticompetitive practices such as fixing of premium, market sharing and coordinated action or conscious parallelism.³⁹

The insurance business in Ethiopia, as it is expounded above, has more than a century of existence and it was among the first countries in the continent of Africa in introducing modern insurance.⁴⁰ Meanwhile, today, the insurance sector is criticized for its little market penetration and insignificant contribution to the GDP of the country.⁴¹ Furthermore, the insurance industry's overall performance is "very small" and insurers depend on "corporate business referrals from banks".⁴² This poses a question on the horizontal competitiveness of the insurance industry and the study endeavours to assess the insurers' competitiveness. Besides, the compatibility of the current competition and consumer protection law of the country to the specific needs of the

³⁵ For example, the Kosovo Competition Authority fined ten insurance companies for price fixing agreement in 2010. See Orhan M. Çeku and Mentor Q. Shaqiri, *Anticompetitive Agreements According to Kosovo's Law on the Protection of Competition*, p.203. The Italian Antitrust Authority also punished 39 companies for anti-competitive behavior in the motor vehicle insurance market. See Paolo Coccorese, *Information Sharing, Market Competition and Antitrust Intervention: Lessons from the Italian Insurance Sector*, *Journal of Applied Economics*, 2012, Vol.44, Issue 3, pp. 1-20. [Hereinafter, Paolo Coccorese, *Information Sharing, Market Competition and Antitrust Intervention*]. The current Ethiopian Competition and Consumer Protection Proclamation is also applicable to the insurance sector.

³⁶ See OECD Policy Roundtables, *Competition and Related Regulation Issues in the Insurance Industry*, OECD, Paris, 1998, p.12. [Hereinafter, OECD Policy Roundtables, *Competition and Related Regulation Issues in the Insurance Industry*].

³⁷ See United Nations Conference on Trade and Development (UNCTAD), *Trade and Development Aspects of Insurance Services and Regulatory Framework*, United Nations, New York and Geneva, 2007, P.2. [UNCTAD, *Trade and Development Aspects of Insurance Services*].

³⁸ See OECD Policy Roundtables, *Competition and Related Regulation Issues in the Insurance Industry*, pp.23-26.

³⁹ See N.A. Rahman and R.H. Ahamat, *Competition law and the Malaysian financial sector*, pp.75-76.

⁴⁰ See Tibebe Tilahun, *Understanding the Historical Background of Insurance Sector in Ethiopia*, PP.1-3. See also Hailu Zeleke, *Insurance in Ethiopia*, pp.75-80.

⁴¹ See Shimeles Beyene, *Analysis of Market Power and Competitiveness of the Ethiopian Insurance Industry*, p.2.

⁴² See Japan International Cooperation Agency (JICA) and Japan Economic Research Institute Inc., *Data Collection Survey on Development Finance Sector in Federal Democratic Republic of Ethiopia: Final Report*, 2013, p.31. [Hereinafter, Japan International Cooperation Agency (JICA) and Japan Economic Research Institute Inc., *Data Collection Survey on Development Finance Sector in FDRE*].

insurance sector demand further scrutiny. The research, therefore, delves into the details to scrutinize the horizontal competition among insurers in the Ethiopian insurance market in light of common competition variables like price, product variety, utilization of modern technology and strategic alliance.

1.2 Statement of the Problem

Insurance is an indispensable mechanism of preventing harm arising out of risks. It is supposed to be the engine of every economy. In developing countries, the horizontal competition in the market (insurance market included) is very weak. The reasons being highest entry barrier attributed to scant business infrastructure (financial market), fragile market due to high concentration, the dominant position is pervasive and above all the competition authorities are young suffered from the dearth of experts.⁴³ The Ethiopian insurance sector has more than a century of existence and it was among the first nations in Africa to introduce modern insurance services.⁴⁴ Meanwhile, currently, the insurance industry of the country when seen comparatively with other African countries is underdeveloped.⁴⁵ Specifically, the following problems in the industry demand a further scientific investigation.

First, the Ethiopian insurance sector is criticized for its little market penetration, traditional products, and the concentration of insurers at the capital of the country.⁴⁶ Furthermore, the contribution of the insurance industry to the Country's GDP is insignificant.⁴⁷ This poses a concern over the horizontal competitiveness of insurers in the sector and calls for further scrutiny. Moreover, the Ethiopian insurance industry's overall performance is "very small" and

⁴³ See Vinod Dhall, Competition Law and Consumer Protection- Insights to their Interrelationship, in Hassan Qaqaya and George Lipimile (ed.), *The Effects of Anticompetitive Business Practices on the Developing Countries and their Development Prospects*, The United Nations Conference on Trade and Development, United Nations, New York and Geneva, 2008, p.10.

⁴⁴ See Girmachew Gashaw, Real Competition to Gear up Ethiopia's Insurance Sector for Better Efficiency, *The Ethiopian Herald*, Vol. __, No. 797, (December 13, 2018), pp.1-2. Available at <<https://www.press.et/english/?p=575#>> [Last accessed on February 2, 2021]. [Hereinafter, Girmachew, Real Competition to Gear up Ethiopia's Insurance Sector].

⁴⁵ *Ibid.*

⁴⁶ See Yared Kefyalew Damarso and Bogale Anja Abba, Trade Competition among Insurers in Ethiopia: A Critical Analysis, *Beijing Law Review*, 2020, Vol.11, No.2, pp.444-463, at p. 449. Available at <<https://doi.org/10.4236/blr.2020.112028>> [Last accessed on January17, 2020]. [Hereinafter, Yared Kefyalew and Bogale Anja Abba, *Trade competition Among Insurers in Ethiopia*].

⁴⁷ Refer Shimeles Beyene, *Analysis of Market Power and Competitiveness of the Ethiopian Insurance Industry*, p.2. See also Yared Kefyalew Damarso and Bogale Anja Abba, Trade competition among Insurers in Ethiopia, p.449.

insurers depend on “corporate business referrals from banks”.⁴⁸ These facts demand exploration of the horizontal competition among insurers in the country in light of common competition variables like premium (price) determination, product variety and innovation and use of up-to-date technology.

Secondly, the insurance sector demands some sort of cooperation (strategic alliance) between insurers to ward off problems arising out of uncertainty. The best instances whereby insurance companies cooperate are co-insurance (for sharing large and catastrophic risks) and reinsurance pools that enable insurers to expand their capacity and diversify their risk exposure.⁴⁹ In the insurance sector, such collaborations are essential to yield efficiency and risk prevention mechanisms. This study had explored whether Ethiopian insurers are properly utilizing common methods of horizontal cooperation like information (data) exchange on mortality table, frequency of claims and research and innovation, and other tools of risk diversification pools like coinsurance and reinsurance schemes.

Thirdly, how the current Ethiopian TCCPP and other bylaws such as directives of NBE balance between those efficiency-enhancing cooperation’s and other dangers of coordination like price comparison, price-fixing, and other collusive acts such as sharing sensitive information arising out of cooperation require further scrutiny. All in all, the above points demand exploration of the horizontal competitive status of Ethiopian insurers in light of common competition variables like price (premium), product variety and innovation and use of modern technology in addition to horizontal coordination between insurers in the country.

1.3 Objective of the Study

The study has the following general and specific objectives.

⁴⁸ See Japan International Cooperation Agency (JICA) and Japan Economic Research Institute Inc., *Data Collection Survey on Development Finance Sector in FDRE*, P.31.

⁴⁹ See European Commission, *Different Forms of Cooperation and their Respective Impact on Competition, Studies on Issues Pertaining to the Insurance Production Process with Regard to the Application of the Insurance Block Exemption Regulation (IBER)*, Belgium, Brussels, 2016, p.5. Available at < <https://op.europa.eu/ga/publication-detail/-/publication/6f496ee1-9af4-11e6-868c-01aa75ed71a1/language-en/format-PDF/source-120898031> > [Last accessed February 10, 2021]. [Hereinafter, European Commission, *Different Forms of Cooperation and their Respective Impact on Competition*].

1.3.1 General Objective

The main objective of the study is to explore the horizontal competitiveness of Ethiopian insurers in light of common competition variables. Besides, the study aims to expound the legal framework and practical applicability of strategic alliances among insurers in Ethiopia.

1.3.2 Specific Objectives

The proposed study has the following objectives.

- ❖ Exploring the competition of Ethiopian insurers in the setting of premium (price).
- ❖ Canvassing the competitiveness of Ethiopian insurers in product variety, innovation and use of modern technologies.
- ❖ Assessing how the TCCPP balances competition and cooperation in the insurance sector.
- ❖ Evaluating the compatibility of the TCCPP to the specific needs of the insurance sector.
- ❖ Examining the practical applicability of horizontal cooperation in the Ethiopian insurance industry.
- ❖ Recommend the possible solution for the identified horizontal competition problems in the Ethiopian insurance sector (if any).

1.4 Research Question

The study has the following central and specific research questions.

1.4.1 Central Research Question

Does Ethiopian insurers' horizontally competitive? And, what looks like the strategic alliance (horizontal cooperation) among Ethiopian insurers?

1.4.2 Specific Research Questions

The study has the following specific research questions to be answered.

- What is the horizontal competitive status of Ethiopian insurers in price (premium)?
- Are Ethiopian insurers competitive enough in product variety, innovation and use of modern technology?

- Does the TCCPP allow horizontal coordination (strategic alliance) among insurance companies?
- Are the TCCPP and other directives compatible with the peculiar needs of the Ethiopian insurance sector?
- Do insurers in Ethiopia utilize common ways of horizontal cooperation (strategic alliance) among them?

1.5 Significance of the Study

The study will serve as a relevant reference and literature for further study by any interested person. Moreover, it can also serve as an input for policymakers, legislators, and regulators to amend and revise the existing legal and institutional framework loopholes in the competitive atmosphere of the Ethiopian insurance sector. In addition, it is also relevant for the insurance sector for the study devoted to the horizontal competitiveness and strategic alliances of Ethiopian insurers.

1.6 Review of Literature

Written literature on the competitive status of the Ethiopian insurance sector is scant. To the best of the researcher's knowledge, there are two pieces of literature related to the study. The first literature is written by Yared Kefyalew Damarso and Bogale Anja Abba. Their research⁵⁰ found that insurance companies in Ethiopia use lowering of premium as a customer attraction and retaining strategy. Furthermore, the researchers indicated that compared to other African countries, the Ethiopian insurance sector is underdeveloped. Particularly, it is characterized by a low level of insurance penetration, and insignificant contribution (of the sector) to the country's GDP. According to the researchers, insurance companies in Ethiopia have a limited capacity for premium setting and poor risk assessment methodology. The other problem of the sector is the concentration of insurers in the capital city of the country. Despite the above-stated vicissitudes of the scholars, the horizontal competitiveness of the sector other than price-driven competition strategy is not well addressed by the authors. In addition, the study does not cover the status of permissible horizontal collaborations (strategic alliances) in the insurance sector.

⁵⁰ See Yared Kefyalew Damarso and Bogale Anja Abba, Trade Competition among Insurers in Ethiopia, PP.44-463.

The other researcher who studied the Ethiopian insurance market is Shimeles Beyene.⁵¹ The researcher after his study of the Ethiopian insurance market concludes that there is market power in the Ethiopian insurance industry and the state-owned insurance corporation is the dominant insurer in terms of gross premium, total assets and paid-up capital. Furthermore, according to the study, four insurance companies dominate the market and thus the Ethiopian insurance market is “highly oligopolistic”. Finally, the researcher recommends the need to permit foreign insurers, the merger of small insurance providers, the need to privatize the state-owned insurance corporation, and the necessity of creating public awareness about competition. Despite the researcher’s effort to show the status of market power in the Ethiopian insurance market, there is still an unexplored dimension of the issue. The researcher neither addressed the horizontal competitive status of insurance companies based on different competition variables nor their horizontal cooperation. Thus, this research endeavours to fill these research gaps.

1.7 Research Methodology

1.7.1 Research Method and Design

Methodologically, the study employed empirical research substantiated by a qualitative research approach.⁵² A qualitative research approach is preferable for an “in-depth and profound analysis”⁵³ of horizontal competition in the Ethiopian insurance market. Accordingly, the study used a profound analysis of pertinent legislations, magazines, newspapers, annual reports, and literature. Besides, empirical investigations are made through a semi-structured personal interview⁵⁴ to gather data from authorities like NBE, Association of Ethiopian Insurance (AEI), the Ethiopian Competition and Consumer Protection Authority and experts and leaders of selected insurance companies. A semi-structured interview enables the researcher to forward pre-set questions that at times demand further explanation. Moreover, it was relevant to raise new

⁵¹ Shimeles Beyene, *Analysis of Market Power and Competitiveness of the Ethiopian Insurance Industry*, PP.1-60.

⁵² Qualitative study is well suited for analyzing the type of evidence and, developing various arguments that are typically observed in law reviews. See Katerina Linos & Melissa Carlson, Qualitative Methods for Law Review Writing, *The University of Chicago Law Review*, 2017, Vol. 84, No. 213, PP. 213-238, at p. 214.

⁵³ ያለው እንዳወቀ የምርመራ መሰረታዊ መርሆችና አተገባበር ትኩረት ሰጥቶ ሊታወቅ መግቢያው አሳታሚ፤ ባህር ዳር፤ ኢትዮጵያ ፤2009 ገፅ181.

⁵⁴ Semi-structured interview is useful to raise new and relevant questions that may come in to the mind of the researcher at the time of the interview.

questions following the response of the interviewee. By doing so, the researcher could achieve the research objectives and the research questions thereto.

1.7.2 Sampling Techniques and Participants of the Study

The sampling technique employed in this study was a non-probability sampling design to take samples from the study population. Among the non-probability sampling types, purposive (also named subjective or judgment sampling) was used to select insurance companies based on their specific characteristics and compatibility to the objective and research questions of the study. Accordingly, the top insurance companies (based on their gross profit in the financial year 2019/2020) were selected for the study. Thus, the Ethiopian Insurance Corporation, Nyala Insurance S.C, Awash Insurance S.C, Nile Insurance Share Company, United (Hibret) Insurance S.C, and Zemen Insurance S.C are explored in the study.⁵⁵ The Ethiopian Insurance Corporation (EIC) was selected because as a state-owned corporation it has a dominant market position that supposedly has an impact on the competitiveness of the industry.⁵⁶ Finally, Zemen insurance S.C. is the latest company to join the insurance market⁵⁷ which is relevant to show the horizontal competitive status of new market entrants in the Ethiopian insurance industry.

1.7.3 Data Sources and Collection Techniques

The researcher employed both primary and secondary sources of data as input for the proper undertaking of the study.

1.7.3.1 Primary Sources of Data

Since the study incontestably had a doctrinal aspect, there was an analysis and review of pertinent Ethiopian laws. Thus, the researcher had examined relevant laws like the TCCPP, the insurance business proclamation, and other related directives of NBE. Furthermore, the interview was used as a primary source of data. Particularly, a semi-structured personal interview had been

⁵⁵ See ADDIS BIZ.com, Business news, Top Insurance Companies in Ethiopia for 2019/2020 Budget Year, January 4, 2021, P.1. Available at <<https://addisbiz.com/business-news/2351-top-insurance-companies-in-ethiopia-for-2020-2019-budget-year/>> [Last accessed on 25 February 2021]. According to this source, the selected companies are the top insurance companies for the budget year of 2019/2020 in their gross profit. Besides, saving Zemen Insurance S.C. other companies are also among the top in terms of their branch expansion as well as capital.

⁵⁶ See D. Guruswamy, The Effect of Uncollectible Premium Connected with Insurance Terms of Credit Service Companies in Ethiopia, *International Journal of Current Research and Review*, 2012, Vol.4, Issue No. 4, pp. 125-134 at 132.

⁵⁷ See ADDIS BIZ.com, Business News, Top Insurance Companies in Ethiopia for 2019/2020 Budget Year, December 11, 2020, P.1. Available at <<https://addisbiz.com/tag/zemen-insurance-company/>> [Last accessed on 26 February 2021].

made with officials and experts of the NBE, the Ethiopian Competition and Consumer Protection Authority, experts and leaders of insurance companies, and the Association of Ethiopian Insurers who can provide relevant information as to the competitive status and horizontal cooperation of the sector under study.

1.7.3.2 Secondary Sources of Data

The researcher also examined documents, annual reports of NBE, and insurance companies' reports to gather useful data for the study. Further, other secondary sources of data such as books, journal articles, reports, newspapers, internet sources, and so on were consulted to acquire useful data that can substantiate the main inquiry of the study.

1.7.4 Method of Data Analysis

The data gathered from the aforementioned sources were analyzed using a thematic qualitative data analysis method. Thus, there was a data preparation that involves arranging the collected data logically and systematically. Then, there was a categorization of data. Here, the collected data were classified according to the related themes of the study. Finally, the acquired data were interpreted and analyzed to form part of the study to enable the researcher to arrive at conclusion and forward recommendations.

1.8 Limitation of the study

The main limitation of this study was the inadequacy of domestic works of literature written on the topic. This was a challenge to undertake the study profoundly. Furthermore, the reluctance of experts in different insurance companies to disclose some sorts of data like premium had an impact on the quality of the study.

1.9 Scope of the Study

The scope of this study is constrained to the analysis of the horizontal competitiveness of the Ethiopian insurance market. It will not specifically study other micro-insurance businesses and informal insurance markets. Besides, the whole study focused on horizontal competition issues and the study does not explore other dimensions of competition in the insurance market in detail. Further, the issue of the merger and abuse of dominance are not included in the study.

1.10 Ethical Considerations

In the course of conducting this study if the researcher found data that adversely affect the insurance company or perhaps affect its trade secret, the confidentiality of the data is maintained. Besides, full disclosure as to the purpose of the study, the identity of the researcher and the freedom of participants (interviewees) to withdraw from the study was made to secure their voluntary collaboration.

1.11 Overview of Chapters

This study comprised four major chapters. The first chapter is the proposal for the study. It describes what the study is all about and how the study was conducted to achieve the objectives of the study and answer the research questions. The second chapter is devoted to the conceptual analysis of horizontal competition in general and the insurance sector in particular. It is in this chapter the conceptual underpinning of horizontal anti-competitive agreements, insurance and use of technology, price-cutting competition, the standards of review in competition law, and common methods of horizontal collaboration (alliance) between insurers are raised. The third chapter, on the other hand, discussed the horizontal competitiveness of the Ethiopian insurance sector in light of common competition variables like price (premium), product variety, and innovation and technology. It also explored areas of strategic alliance in the competitive environment of the Ethiopian insurance industry. The fourth and last chapter recapitulated the whole study and, ultimately points of conclusion and possible recommendations are provided therein.

CHAPTER TWO

THE CONCEPTUAL UNDERPINNINGS OF HORIZONTAL COMPETITION IN GENERAL

2.1 Introduction

The first part of this chapter scrutinizes the concept of horizontal competition. Furthermore, this chapter analyses various types of horizontal anti-competitive practices, the use of technology and innovation for insurance, the concept of price-cutting competition, and the notion of agreement in competition law. The standards of review in competition law are also another issue of discussion. Finally, this chapter is also going to expound on the horizontal cooperation varieties in the insurance sector, the justifications for collaboration, and the possible anti-competitive aspects thereof. The chapter illuminates the conceptual aspects of the study and serves as a springboard for the subsequent discussions.

2.2 Horizontal Competition: A General Conceptual Overview

Competition law aims to protect competition in the market.⁵⁸ For doing so, it controls anti-competitive agreements, abuse dominant market power and unfair trade practices.⁵⁹ As the term may suggest, horizontal competition indicates the rivalry of firms in a similar stage of the production cycle.⁶⁰ Firms compete horizontally to attract customers and ultimately gain a better market share. Horizontal competition between potential competitors' is assumed to result in "lower prices, better products, wider choice and greater efficiency" than that would be without

⁵⁸ The aim of both competition law and competition policy is preventing anti-competitive practices and creating a level playing field for all market actors. For further scrutiny of these concepts, See Boban Stojanović and Milan Kostić, Competition Policy and the Impact of Market Structure, *Original Scientific Paper*, p.329. Available at <https://www.researchgate.net/publication/270437226_Competition_policy_and_the_impact_of_market_structure_on_companies'_profitability> [Retrieved on June 02, 2021].

⁵⁹ See Lloyd's Market Association (LMA), Competition Law Guidance, 2017, p.3. Available at <www.lmallyds.com> [Last accessed on April2, 2021]. [Herein after, LMA, Competition Law Guidance].

⁶⁰ See Andrea Lista, *EU Competition Law and the Financial Services Sector*, p. 17.

competition.⁶¹ When firms compete horizontally, competition law assumes, they would strive to innovate new products and ultimately customers can obtain diversified products. In the modern days of the dynamic business world, “technology is absolutely essential “...” in all lines of insurance not only as a competitive and productivity tool but also as a means of building brand name recognition.”⁶² For instance, African countries like Kenya and Ghana are modernizing their insurance sector using modern technologies.⁶³ To be exact, the sale and distribution of insurance are made in these countries through mobile phones that in turn improved the market penetration of the insurance industry.⁶⁴ Moreover, when there is strong competition in the market, insurance companies strive to work hard to retain customers. This sort of competition reduces prices and boost quality and choice.⁶⁵ Consumers’ welfare which is “recognized as the touchstone and dominant goal of competition laws” is supposed to be maximized in a competitive market where customers can have a wider choice of different products, and improved quality of goods and services.⁶⁶ However, when there is a dearth of competition in the market, firms lack an incentive to lower prices, increase quality, and offer a variety of products. This is because if firms know the fact that customers have no choice they may “treat them unfairly.”⁶⁷ In addition, unless the state intervened in the market through competition law, competitors might also engage in anti-competitive practices to retain customers and acquire supra-competitive prices.⁶⁸

⁶¹ See Richard Whish and David Bailey, *Competition Law*, pp1&3. See also John H. Shenefield and Irwin M. Stelzer, *The Antitrust Laws: A Premier*, The AEI Press, Washington DC, USA, 2001, p.1. [Hereinafter, J.H. Shenefield and I.M. Stelzer, *The Antitrust Laws*].

⁶² See Tibebe Tilahun, Failure of Insurers to aggressively and Timely Upgrade to, Update, Develop, Embrace and Use the Right Available Technology, p.3. Available at <www.wisdomccc.com> [Last accessed on May 22, 2021].

⁶³ See Worku R. Urgaia, The Contribution of Financial Sector Development for Economic Growth in East Africa, *Journal of Applied Economics and Finance*, Vol.3, No.2, PP.201-214, at P.202.

⁶⁴ See Wasihun Mekonnen, Independent Insurance Regulator can do Wonders for Industry, *Addis Standard*, Vol.20, No.1036 (7 March, 2021), p.3. Available at <<https://www.addisfortune.news/independent-insurance-regulator-can-do-wonders-for-industry/>> [Last accessed on 24 November 2020]. [Hereinafter, Wasihun Mekonnen, Independent Insurance Regulator can do Wonders for Industry].

⁶⁵ See United Kingdom’s Department of Trade and Industry, *Productivity and Enterprise: A World Class Competition Regime*, Competition Reform White Paper 5233, July 2011, p.1. Available at <<http://www.dti.gov.uk/ccp/topics2/pdf2/compwp.pdf>> [Last accessed on 9 March 2021]. [Herein after, *Productivity and Enterprise: A World class competition regime*]. [Hereinafter, United Kingdom’s Department of Trade and Industry, *Productivity and Enterprise: A World Class Competition Regime*].

⁶⁶ See Susan Beth Farmer, Competition and Regulation in the Insurance Sector: Reassessing the McCarran Ferguson Act, *Oregon Law Review*, 2011, Vol.89, No.__, pp.915-950 at p.920. [Hereinafter, Susan Beth Farmer, Competition and Regulation in the Insurance Sector].

⁶⁷ See United Kingdom’s Department of Trade and Industry, *Productivity and Enterprise: A World Class Competition Regime*, p. 3.

⁶⁸ The rationale for the state intervention in the market through competition law is declared in the preamble of the competition law of a number of countries. The same reason is vividly stated in the TCCPP of Ethiopia.

Accordingly, the common factors used in competition law to determine the existence of competition are “price, quality, variety of products, and innovation.”⁶⁹ Firms are supposed to determine these parameters independently based on market demand and competition. Any sort of cooperation (be it overt or covert) between competitors in the determination of these factors triggers the intervention of competition law to evaluate the impact (positive or negative) of the practice on the market.⁷⁰ In what follows, an overview of the common horizontal anti-competitive practices is made.

2.3 Horizontal Anti-competitive Agreements: An Overview of their Essence

Horizontal anti-competitive agreements or “horizontal restraints” to competition are various sorts of agreements between actual or potential competitors to limit competition.⁷¹ Unlike the case of vertical restraints, horizontal restraints are in most cases anti-competitive and are, thus, prohibited under per se approaches.⁷² The primary concern of competition law in condemning horizontal restraints is to reduce adverse market power results like output reduction and price increases.⁷³ Based on their perceived impact on competition, horizontal agreements are divided into two categories; horizontal per se agreements and horizontal non per se agreements.⁷⁴ Horizontal per se agreements are agreements condemned by competition law for their anti-competitive result. However, horizontal non per se agreements are “arrangements that are not necessarily detrimental to competition”.⁷⁵ The latter categories of horizontal agreements are not illegal per se because the effect depends on the market condition and the relation between firms

⁶⁹ See Alexander Italianer, *Competition Agreements under the EU Competition Law*, Speech Delivered at the 40th Annual Conference on Antitrust Law and Policy, Fordham Competition Law Institute, New York, 26 September 2013, p.5.[Hereinafter, Alexander Italianer, *Competition Agreements under the EU Competition Law*].

⁷⁰ See Orhan M. Çeku and Mentor Q. Shaqiri, *Anti-Competitive Agreements According to Kosovo’s Law on the Protection of Competition*, p.194.

⁷¹ See Thomas B. Leary, *A Structured Outline for the Analysis of Horizontal Agreements*, p. 1. Available at <www.ftc.gov/public/statments/chairsshowcasetalk/pdf> [Last accessed on 17 February 2021]. [Here in after, Thomas B. Leary, *A Structured Outline for the Analysis of Horizontal Agreements*].

⁷² See Richard and David, *Competition Law*, p.3. The concept of *per se*, rule-of-reason, and quick-look test will be elaborated in the discussions to come.

⁷³ See Thomas E. Kauper, *The Sullivan Approach to Horizontal Restraints*, *California Law Review*, 2016, Vol.75, No.3, pp.893-915, at p. 897. Available at<: <http://www.jstor.org/stable/3480655>> [Last accessed on 18 February 2021].

⁷⁴ See Andrea Lista, *EU Competition Law and the Financial Services Sector*, p. 7. Notable examples of this category are price-fixing agreements and other cartelization practices that are unlawful per se without considering their likely impact on competition. *Ibid.*

⁷⁵ *Ibid.*

that in turn demands a case-by-case analysis.⁷⁶ Price, quality and innovation are the common parameters used to evaluate the anti-competitive aspects of a certain action.⁷⁷ One author observed:

In order to rule if competition was restricted, one should analyze the effect of the agreement on the parameters of market competition such as the price, quantity of productions, quality of productions, variety of productions and market innovations. Price and quantity of production are the most important parameters of market competition; every limitation in the freedom to set them independently by enterprises is harmful for competition.⁷⁸

Therefore, anti-competitive practices occur when market competitors determine the price of the product together, agreed on the amount of production or the variety of productions, and consent to divide the market. This in turn affects the interest of consumers and ultimately the economy of the country. In what follows, separate scrutiny of the common anti-competitive practice and its typologies are provided.

2.3.1 Cartels

Cartels are agreements⁷⁹ between market competitors to restrict competition in a certain market.⁸⁰ A cartel is a voluntary association between potential competitors to fix prices, limit the supply of a product, fix the terms of trade, assign customers, and divide territories.⁸¹ Cartels are the most harmful of all anti-competitive practices that result in substantial damage to the economy and consumers.⁸² Cartels are the most severely punished type of horizontal anticompetitive conduct that is supposedly the outcome of firms' conspiracy against the public

⁷⁶ *Ibid.*

⁷⁷ See Orhan M. Çeku and Mentor Q. Shaqiri, *Anti-Competitive Agreements according to Kosovo's Law on the Protection of Competition*, p.194.

⁷⁸ *Ibid.*

⁷⁹ The meaning of "agreement" in competition law will be discussed in the subsequent discussions.

⁸⁰ See Accountlearning.com, Contents for management studies. Available at <<https://www.What%20is%20a%20Cartel%20-%20Types%20of%20Cartels.html>> [Last accessed on March 25, 2021].

⁸¹ See United Nations Conference on Trade and Development (UNCTAD) Trade and Development Board Trade and Development Commission Intergovernmental Group of Experts on Competition Law and Policy *The Impact of Cartels on the Poor*, 13th session, Geneva, July 8-12, 2013, P.3. Available at <https://unctad.org/system/files/official-document/ciclpd24rev1_en.pdf> [Last accessed on February 20, 2021]. [Hereinafter, UNCTAD, *The Impact of Cartels on the Poor*].

⁸² See United Nations Conference on Trade and Development (UNCTAD), *The Effect of Anticompetitive Practices on Developing Countries and their Development Prospects*, in Hassan Qaqaya and George Lipimile (edns.), United Nations, New York and Geneva, 2008, p.xvii. [Herein after, UNCTAD, *The Effect of Anticompetitive Practices on Developing Countries*].

and customers.⁸³ Adam Smith observed that sometimes the interest of traders may be different from the public.⁸⁴ He argued widening of market and narrowing (restricting) competition are the interest of traders.⁸⁵ Cartel is, thus, a war waged by firms against the competition in the market. Cartel is the concern of all competition authorities. Literature' define cartel as '[t]he supreme evil of antitrust,' 'the most egregious violations of competition law,' and 'cancers on the open market economy.'⁸⁶ If potential competitors wittingly gather to fix prices, allocate territories or customers, restrict output and collude in the bidding, the customers in particular and the economy, in general, would be seriously harmed. That is why the competition laws of most jurisdictions severely punished cartels than any other anti-competitive practice as a per se violation of competition law.⁸⁷

In terms of effect, cartels are devastating for the consumers and Small and Medium-Sized Enterprises (hereinafter, SMEs).⁸⁸ It is devastating because in a cartelized market it is hardly possible for SMEs to penetrate a cartelized market and operate their business therein.⁸⁹ Besides, customers are disadvantaged in a cartelized market because they would be deprived of their choice, and required to pay a higher price than the market may determine. The poor sections of society are also vulnerable to the adverse impacts of a cartel. Research has found that when cartels involve basic goods and services that constitute the bare necessities of life, the impact of cartels on the poor is most egregious.⁹⁰ Additionally, cartels have also a tendency to limit product innovation and quality improvements that are the outcomes of competition in a certain market.⁹¹

⁸³ See UNCTAD, *The Impacts of Cartels on the Poor*, pp.1&3.

⁸⁴ See Adam Smith, *An Inquiry in to the Nature and Causes of the Wealth of Nations*, Edwin Cannan (edn.), Elec Book Classics, University of Chicago Press, USA, 1977, p.348. [Herein after, Adam Smith, *The Wealth of Nations*].

⁸⁵ *Ibid.*

⁸⁶ See Niamh Dunni, Characterizing Hardcore Cartels under Article 101 of TFEU, *The Antitrust Bulletin*, 2020. Vol.65, No.3, pp.376-400, at p.376. Available at <<https://journals.sagepub.com/doi/full/10.1177/0003603X20929121>> [Last accessed on 27 March 2021]. [Hereinafter, Niamh Dunni, Characterizing hardcore cartels under Article 101 of TFEU].

⁸⁷ See UNCTAD, *The Impacts of Cartel on the poor*, p.1.

⁸⁸ *Id.*, p.3.

⁸⁹ *Ibid.*

⁹⁰ See OECD, *Hardcore Cartels*, Report, OECD Publication Services, Paris, France, 2000, p.3. Available at <<https://www.oecd.org/daf/competition/cartels/2752129.pdf>> [Retrieved on 29 March 2021]. [Hereinafter, OECD, *Hardcore Cartels*].

⁹¹ See Robert H. Porter, *Detecting Collusion*, The Centre for the Study of Industrial Organization, Northwestern University, Working paper #0051, Illinois, USA, p.3. Available at <[18](https://cpb-us-</p></div><div data-bbox=)

2.3.1.1 Types of Cartels

From the discussions made so far, it becomes clear that cartels have a variety of types. Price fixing cartels, market sharing (division) cartels, bid-rigging cartels, and cartels restricting supply are commonly known as “hardcore cartels” that are notorious for causing significant economic harm.⁹² A price-fixing cartel is a consensus among potential competitors to raise, fix or maintain the price at which their products are sold.⁹³ Thus, the agreement between competitors in the price-fixing cartel need not necessarily be to raise the price of the good or service, rather artificial pricing is sufficient for competition law’s intervention. Furthermore, the price fixed as a result of the cartel may be lower than the price that would be in the competitive market. Phillip Areeda claimed that several courts make an erroneous judgment in cases involving cartels believing that antitrust law aims to lower prices.⁹⁴ However, the ultimate objective of competition law is not cheapness but a free market.⁹⁵

To characterize an agreement between competitors as a “price-fixing cartel” it is not always necessary to consider the amount of price. Other things being equal, in the competitive market ‘it is unlikely that companies set the same price level without having made some sort of a secret agreement due to differences in their cost structures and other similar matters.’⁹⁶ Price, needless to mention, is one of the most important factors of competition.⁹⁷ When competitor firms set equal or related price through agreement, the free market ideals promoted by competition law is defeated. Price is deemed to be fixed when competitors agree to obey price discounts, hold prices firm, eliminate or reduce discounts, and adopt a standardized formula for the computation of prices.⁹⁸ The second type of cartel is market division (sharing) cartels. Market division cartels in

e1.wpmucdn.com/sites.northwestern.edu/dist/a/570/files/2015/08/2004-CSIO-WP-0051-1buozl7.pdf > [Accessed on 29 March 2021]. [Herein after, Robert H. Porter, *Detecting Collusion*].

⁹² See OECD, *Hardcore Cartels*, P.3.

⁹³ See US Department of Justice, An Antitrust Premier, Price Fixing, Bid Rigging, and Market Allocation Schemes: What they are and what to Look for, p.2. Available at <<https://www.justice.gov/sites/default/files/atr/legacy/2007/10/24/211578.pdf> > [Last accessed on 26 March 2021]. [Hereinafter, US Department of Justice, Price fixing, Bid rigging, and Market allocation Schemes].

⁹⁴ See Phillip Areeda, *The “Rule of Reason” in Antitrust Analysis: General Issues*, Federal Judicial Centre, USA, 1981, p.6. Available at <<https://www.fjc.gov/sites/default/files/2012/Antitrust.pdf>>. [Last accessed on 17 May 2021]. [Hereinafter, Phillip Areeda, *The “Rule of Reason” in Antitrust Analysis*]

⁹⁵ *Id.*, pp.5-6.

⁹⁶ See Orhan M. Çeku and Mentor Q. Shaqiri, Anticompetitive Agreements according to Kosovo’s Law on the Protection of Competition, PP.192-193.

⁹⁷ *Id.*, p.194.

⁹⁸ See US Department of Justice, Price fixing, Bid rigging, and Market allocation Schemes, p.2. See also International Competition Network (ICN) Anti-cartel Enforcement Manual, Cartel Working Group, subgroup 2

turn can be compartmentalized into geographic market division cartels or customer allocation cartels.⁹⁹ Competing firms in a geographic market sharing cartel reciprocally agree not to enter each other's assigned territory.¹⁰⁰ The other form of market sharing cartel involves 'an agreement among firms not to approach each other's customers.'¹⁰¹ Market sharing cartel aims to maximize each firm's profit and secure monopoly in the areas (customers) assigned to each member of the cartel by blocking the entry of new rivals in the market.¹⁰² This not only increases the price of the good or service but also deprive customers of choice among various alternative or substitute goods or services. Consequently, the market sharing cartel is declared per se illegal in the competition statutes.¹⁰³ The third type of cartel that is seriously condemned by competition law is output restricting cartels. This involves an agreement among competing firms to limit the supply of the goods or services the companies offer to their customers.¹⁰⁴ Similar to other types of cartels elaborated above, output restricting cartels would have the ultimate effect of making them unavailable for some customers and too expensive for others.¹⁰⁵ The aim of the output restriction cartel is creating scarcity through restricting supply that naturally leads to price increases.¹⁰⁶ In the normal course of things, competing companies in the competitive market may restrict their output independently based on market demand. However, competition law condemns that cooperation (agreement) among competing firms aiming at restricting output to

Enforcement Techniques, *Chapter 4 Cartel Case Initiation*, March 2010, p.4. Available at <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/CWG_ACEMSearchesRaids.pdf> [Last accessed on 1 April 2021]. [Hereinafter, International Competition Network (ICN), *Cartel Case Initiation*].

⁹⁹ See Paul Belleflamme and Francis Bloch, Market Sharing Agreements and Collusive Networks, *International Economic Review*, 2004, Vol.45, No.2, pp.387-411, at PP.387-388. Available at <<https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1468-2354.2004.00130.x>>. Accessed on 27 March 2021. [Herein after, Paul Belleflamme and Francis Bloch, Market Sharing Agreements and Collusive Networks].

¹⁰⁰ See Paul Belleflamme and Francis Bloch, Market Sharing Agreements and Collusive Networks, p.388.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ See Marc Ivaldi, Frédéric Jenny, and Aleksandra Khimich, *Cartel Damages to the Economy: An Assessment for Developing Countries*, A Research Project Funded by the CEPR PEDL Program and UNCTAD RPP Initiative, pp.1-34, at p.1. Available at <<https://cepr.org/sites/default/files/Ivaldi%20-Cartel%20Damages%20061214.pdf>> [Last accessed on 27 March 2021].

¹⁰⁴ See OECD, *Hardcore Cartels*, p.6.

¹⁰⁵ *Ibid.*

¹⁰⁶ See IS Wylie, Cartel Output Restrictions- Construction and Common Sense Collide and Particularity of "Persons" under the Trade Practice Act of 1974, *ABLR*, 2010, Vol.38, No.__, pp.23-40, at P. 27. Available at <<https://www.mbie.govt.nz/dmsdocument/2935-cartel-output-restrictions-submission-pdf>> [Herein after, IS Wylie, Cartel Output Restrictions].

create scarcity and ultimately increase the price of the good or service.¹⁰⁷ The fourth type of cartel is bid-rigging cartel or collusive tendering. This form of cartel takes different forms. Competing firms in the bidding process might agree to select a winner while the rest of the competitors submit an agreed amount (cover price) so that the selected bidder has the lowest tender while at the same time creating an impression that the bidding process is competitive.¹⁰⁸ The other scenario is called “bid suppression” which involves a consensus among firms not to engage in the bidding process so that “a pre-agreed firm” can win the bidding process.¹⁰⁹ The other form of bid-rigging is ‘bid withdrawal.’ Competing firms in the bidding process may agree in unison to withdraw from the bid to enable one or some of the competitors to win the bid.¹¹⁰ Finally, firms may also agree to intentionally include unacceptable terms and conditions¹¹¹ to enable one or some of the competitors to be a winner. Though these are the most common types of a cartel, competitors can also agree to standardize their products, agree to share sensitive information relevant to determine the price, and offer homogeneous products to the consumer in addition to the aforementioned forms of a cartel.¹¹²

2.3.2 Price-Cutting Competition

As its name may suggest, price-cutting competition refers to the circumstance in which competitor firms adopt lowering or cutting price as a competitive strategy to attract customers and thereby acquire better market share.¹¹³ Price-cutting competition is also known as a trade war¹¹⁴ or price war. Price is, obviously, a weapon in which companies (be it insurance or others)

¹⁰⁷ *Ibid.* See also International Competition Network (ICN), *Cartel Case Initiation*, p.4.

¹⁰⁸ See The Austrian Competition and Consumer Commission (ACCC), *Cartels Deterrence and Detection: A Guide for Government Procurement Professionals*, Canberra, Austria 2019, p.4. Available at <https://www.accc.gov.au/system/files/1646_Cartels%20deterrence%20and%20detection%20guide%20for%20government%20procurement%20professionals_FA.pdf> [Last accessed on 29 March 2021]. [Hereinafter, ACCC, *Cartel Deterrence and Detection*].

¹⁰⁹ *Ibid.*

¹¹⁰ *Id.*, p.5.

¹¹¹ *Ibid.*

¹¹² Standardization agreements, agreement to share sensitive data and homogeneous products will be elaborated in the subsequent discussions.

¹¹³ See Robert A. Garda and Michael V. Marn, Price Wars: No Non-Sense Advice on How to Avoid the Death Spiral of Permanently Lost Profit, Declining Value and Heightened Price Sensitivity, *The McKinsey Quarterly*, No. 3, Gale Academic One File, 1993, p.2. Available at <<https://go.gale.com/ps/anonymouse?id=GALE%7CA14648452&sid=googleScholar&v=2.1&it=r&linkaccess=abs&isn=00475394&p=AONE&sw=w>> Accessed on 28 May 2021. [Hereinafter, Robert A. Garda and Michael V. Marn, Price wars].

¹¹⁴ Trade or price war in most cases indicates a retaliatory increase of tariff charges between sovereign countries. The most well-known case in this issue is the trade war between China and United States of America. The trade war

compete in the market. However, price-cutting competition (price war) is criticized as an unhealthy (damaging) practice because the aim here is to lure customers and acquiring market share at the expense of other rivals in the market using price as the sole tool to achieve this. Of course, customers may be temporarily benefited from the decrease in the price of a good (service). Nonetheless, in the long run, they will be deprived of their choice and quality of the product (service).¹¹⁵ It is also found that price wars are devastating for the company, customers and the economy.¹¹⁶ All participants in the price war are harmed by such an act. It is, thus, proved that “[n]o matter who wins, the combatants seem to end up worse off than before they joined the battle.”¹¹⁷ Price war, accordingly, is a race to the bottom competition that adversely affects the market and customers alike. The ultimate result of price war is “market death.”¹¹⁸

The other relevant issue at this juncture is the cause of price war. The cause of price war is not certainly known.¹¹⁹ For some scholars, price-cutting competition supposedly gushed out of three major sources. First, some researchers argued “competitive entry” in a market is a cause of price war.¹²⁰ That means new entrant firms in the market may tend to cut prices so that they may attract customers for these firms lack brand loyalty and enough customers in the market. In the

between the two giants not only affects the economy of the two states but also the rest of the world. See Larisa Kapustina, and *et al*, US –China Trade War: Causes and Outcomes, *SHS web of Conferences*, Vol.73, 2020, pp.2-3. Available at <https://www.shs-conferences.org/articles/shsconf/abs/2020/01/shsconf_ies_2019_01012/shsconf_ies_2019_01012.html> [Last accessed on June 29, 2021].

¹¹⁵ See Oliver P. Heil and Kristiaan Helsen, Towards an Understanding of Price Wars: Their Nature and How they Erupt, *International Journal of Research in Marketing*, 2001, Vol.18, No.____, pp.83-98, at P. 83. [Hereinafter, Oliver P. Heil and Kristiaan Helsen, Towards an Understanding of Price Wars].

¹¹⁶ For further details see Oliver P. Heil and Kristiaan Helsen, Towards an Understanding of Price Wars, p.83.

¹¹⁷ See Akshay R. Rao, and *et al*, How to Fight a Price War, *Harvard Business Review*, March-April, 2000, pp. 107-116 at p.1. Available at < <https://hbr.org/2000/03/how-to-fight-a-price-war>> [Last accessed on May 27, 2021]. [Hereinafter, Akshay R. Rao and *et al*, How to Fight a Price War].

¹¹⁸ See Andreas Krämer and *et al*, A Small Step from Price Competition to Price War: Understanding Causes, Effects and Possible Countermeasures, *International Business Research*, 2016, Vol.9, No.3, pp.1-13, at pp.2. [Hereinafter, Andreas Krämer and *et al*, A Small Step from Price Competition to Price War].

¹¹⁹ See Yahua Zhang and David K. Round, Price Wars and Price Collusion in China’s Airline Markets, *International Journal of Industrial Organization*, 2011, Vol.29, No.4, pp.361-372 at p.361. Available at <<https://pubmed.ncbi.nlm.nih.gov/32287561/>> Accessed on May 27, 2021. [Hereinafter, Yahua Zhang and David K. Round, Price Wars and Price Collusion in China’s Airline Markets].

¹²⁰ See Harald J. van Heerde, and *et al*, Winners and Losers in a Major Price War, *Journal of Marketing Research*, 2008, Vol.45, No.5, pp.499-518, at p.502. [Hereinafter, Harald J. van Heerde and *et al*, Winners and Losers in a Major Price War]. See also Thomas Scheipl Vito Bobek and Tatjana Horvat, Trade War between the USA and China: An Impact on an Austrian Company in the Steel Sector, *Naše gospodarstvo/Our Economy*, 2020, Vol.66, No.1, pp.39-51 at p.40.

same vein, if the incumbent firm in the market responds similarly by lowering its price, price war (price cutting) competition may invade the market. Second, price-cutting can also be caused by a decline in the “economic condition” of the firm.¹²¹ A decline in sales and profit of the firm may force the firm to undercut the price to attract many customers and increase its volume of sales consequently. The aim is to set off the companies declining brand loyalty and customers’ price sensitivity to low prices.¹²² The third cause of price war is misreading of competitors actions by other rivals. Truly, companies in the market may closely observe the pricing move of their competitor to adjust their pricing moves.¹²³ In doing so, there might be a possibility of misunderstanding that leads to the beginning of a price war. Other scholars, on the other hand, argued that the cause of price war is the “untargeted (or targeted)” decision¹²⁴ of one of the rivals in the market.¹²⁵ Concerning this, it is suggested that price wars began because somebody thinks that prices in a particular industry are too high.¹²⁶ Besides, in industries where there is dynamic innovation, cutting of prices and “lowering profit margins” might be used by firms to acquire future market dominance.¹²⁷

2.4 Competition in Innovation and Use of Modern Technology in the Insurance Industry

The insurance sector is increasingly demanding the consumption of various modern technologies that are commonly named “InsureTech”.¹²⁸ InsureTech refers to a plethora of technologies that improve the methods of providing service to clients, reduce the costs and administrative

¹²¹ See Winston Wei Dou, and *et al*, Endogenous Price War Risks, p.1. Available at <<https://gatonweb.uky.edu/faculty/hankins/conf2019/DJW.pdf>> [Last accessed on 27 May 2021]. [Hereinafter, Winston Wei Dou and *et al*, Endogenous Price War Risks].

¹²² See Harald J. van Heerde and *et al*, Winners and Losers in a Major Price War, pp.503-504.

¹²³ See Andreas Krämer and *et al*, A Small Step from Price Competition to Price War, pp.3-4. See also Dr. Ahlam Allzoubi, Corporate Aggression: A Comprehensive Review of Price War, *European Journal of Business and Strategic Management (EJBSM)*, 2020, Vol.5, Issue 2, No.3, pp.50-63 at p.54. [Hereinafter, Dr. Ahlam Allzoubi, Corporate Aggression]

¹²⁴ The cause some times can also be a conscious (targeted) decision of a competitor. A competitor might assume to lower its price and increase its volume of sale or increase its price once it obtained many customers. In both cases, the outcome may not always be as expected saving those situations where the company is cost efficient in the production process than other competitors. See Andreas Krämer and *et al*, A Small Step from Price Competition to Price War, pp.3-4. See also Dr. Ahlam Allzoubi, Corporate Aggression, p.54.

¹²⁵ See Andreas Krämer and *et al*, A Small Step from Price Competition to Price War, p.3.

¹²⁶ See Akshay R. Rao, and *et al*, How to Fight a Price War, p.108.

¹²⁷ See Winston Wei Dou and *et al*, Endogenous Price War Risks, p.1.

¹²⁸ See OECD, Technology and Innovation in the Insurance Sector, OECD, Paris, 2017, p.7. [Hereinafter, OECD, Technology and Innovation in the Insurance Sector].

expenses of insurers, reduce the barriers to entry, and create a new method of innovation for insurers.¹²⁹ Technology in insurance enables insurers to reduce transaction costs and expedite the delivery of services.¹³⁰ Moreover, innovation of new technologies and the digitalization of services have created faster claims notification and settlement systems thereby decreasing the company's overall transaction costs.¹³¹ Insurance that involves the analysis of big historical data and predicting future uncertain events is nowadays made easy through technologies like block chain technology, robo-advice, algorithms and artificial intelligence (AI).¹³² Furthermore, the sale and distribution of insurance products can be made through digitalized systems such as online sales and digital claims settlement thereby avoiding the outdated and rigorous business processes that were made through agents and brokers.¹³³ Digitalization is replacing all the insurers' activities beginning from product development to pricing (underwriting), sales and distribution systems, policy and claims settlement and asset and risk management.¹³⁴ To be exact, the conclusion of insurance contracts can be efficiently made in "smart contracts" i.e. digitalized contracts that do not demand intermediaries' like a lawyer or physical presence of persons.¹³⁵ The overall security of transactions and trust in the financial operation of insurers is beginning to be secured using other new technologies such as block chain technology that involves secured and shared transactions chained in separate block chains in a public ledger.¹³⁶ Moreover, the sale of insurance services that were traditionally made through brokers and agents (intermediaries') is currently undertaken in simple digital systems of applications and online sales that avoid the expense and time insurers were expected to spend.¹³⁷ Besides, other new

¹²⁹ *Id.*, p.8.

¹³⁰ *Ibid.*

¹³¹ *Ibid.* This is identical to the utility of ATM's for banks that save the time of customers and reduce the transaction cost of Banks. *Ibid.*

¹³²

¹³³ Antonella Cappiello, The Technological Disruption of Insurance Industry: A Review, *International Journal of Business and Social Science*, 2020, Vol.11, No.1, pp.1-12, at p.1. [Hereinafter, Antonella Cappiello, The Technological Disruption of Insurance Industry].

¹³⁴ *Id.*, pp.2-5.

¹³⁵ Smart contracts are digital contracts which are capable of executing itself. They are computer programming codes that run in a computer or network of computers without the need for printed paper based contracts. See OECD, Technology and Innovation in the Insurance Sector, p.12.

¹³⁶ Block chain technology is a new technology that attempts to create trust and transparency without the involvement of third party using separate and blocked chains in a distributed public ledger that is hardly exposed to problems like hacking. See OECD, Technology and Innovation in the Insurance Sector, p.12. See also the YouTube video about Block Chain Technology in the following link. <https://www.youtube.com/watch?v=160oMzblY8> > or <https://www.youtube.com/watch?v=93E_GzvpMA0> [Last accessed 1July, 2021].

¹³⁷ See Antonella Cappiello, The Technological Disruption of Insurance Industry, pp.2-5. See also OECD, Technology and Innovation in the Insurance Sector, p.12-18.

models of insurance distribution such as BIMA are replacing intermediaries' (agents and brokers) in less developed insurance markets particularly in Africa.¹³⁸ BIMA is a digital technology intermediating health insurance products using mobile platforms.¹³⁹ This platform registers certain identification details of policyholders and the premium payment is undertaken through automatic deduction of pre-paid airtime credit. All other subsequent communications are conducted via SMS that notifies the remainder of coverage and an amount deducted.¹⁴⁰ This significantly improves the health and affiliated insurance market in countries where insurance penetration is lower.¹⁴¹ Therefore, the adoption and implementation of up to date and modern insurance technology have become one of the common areas where insurance companies horizontally compete in the insurance market.¹⁴²

2.5 Standards of Review in Competition Law

Competition law employs certain standards to evaluate the pro-competitive and anti-competitive effects of market actors' practices. Competition law does not intend to prohibit all anti-competitive agreements without exception. After all, the task of competition authorities and courts is to identify anti-competitive restraints from pro-competitive restraints.¹⁴³ To review the pro-competitive and anti-competitive result of conduct, courts and competition authorities employ certain standards namely per se standard and rule-of-reason standard.¹⁴⁴ These standards were firstborn in the courts of the United States and later refined by other competition laws.¹⁴⁵

¹³⁸ See OECD, Technology and Innovation in the Insurance Sector, pp.16-17. Other intermediaries' of this kind include Freinsurance, InsPeer and Guevara which are notorious in the European and American insurance market. *Ibid.*

¹³⁹ *Ibid.* BIMA operates in 16 insurance markets most of which located in Africa where insurance penetration is very low. *Ibid.*

¹⁴⁰ *Id.*, pp.17-19.

¹⁴¹ *Ibid.*

¹⁴² OECD, Technology and Innovation in the Insurance Sector, pp.16-17. See also Abdul Motin Ostagar, Impact of Technology and Innovation in Insurance Sector, *International Journal of Technology, IT and Management*, 2018, Vol.8, Issue 2, pp.1-6. Refer also Antonella Cappiello, The Technological Disruption of Insurance Industry, pp.2-6.

¹⁴³ See John M. Newman, Procompetitive Justifications in Antitrust Law, *Indiana Law Journal*, 2019, Vol.94, Issue 2, pp.1-44, at p.7. Available at <<https://www.repository.law.indiana.edu/ilj/vol94/iss2/4>>. [Last accessed on 12 March 2021]. [Hereinafter, John M. Newman, Procompetitive Justifications in Antitrust Law].

¹⁴⁴ See Phillip Areeda, *The "Rule of Reason" in Antitrust Analysis: General Issues*, The Federal Judicial Centre, Education and Training Series, Washington DC, USA, June 1981, p.25. Available at <<https://www.fjc.gov/sites/default/files/2012/Antitrust.pdf>> [Last accessed on 20 March 2021]. [Hereinafter, Phillip Areeda, *The "Rule of Reason" in Antitrust Analysis*].

¹⁴⁵ The Sherman Act was the first competition law in its crude form. It prohibits cartel, oligopoly, and monopoly. Henceforth, competition law began to be introduced in many parts of Europe. To be more specific, Germany introduced competition law in 1923. In other parts of Europe, a German like competition laws was promulgated in

The dichotomy between rule per se and rule of reason standards is blurred. In most cases, if not always, per se cases focus on the “nature of the restraint”, while the rule of reason is concerned with the “nature of the market”.¹⁴⁶ In the discussions to come, the particular features and purposes of each standard of review are provided.

2.5.1 The Rule per se Standard

The lexical meaning of the word ‘per se’ is “in itself”, or “by its very nature” or, “on its own” or “inherently.”¹⁴⁷ Rule per se approach is an approach used to outlaw those practices that are deemed to have a ‘pernicious effect on competition’.¹⁴⁸ Those restraints are supposed to be unreasonable and illegal which does not warrant further scrutiny of their pro-competitive dimension.¹⁴⁹ Thus, the per se rule prohibit some restraints because the law presumes that some restraints are inherently anticompetitive and there is no need for further economic analysis. The rule per se approach is praised for two advantages. First, it gives certainty about the legal effect of conduct.¹⁵⁰ If certain conduct is declared illegal, it sends a message for the business community to comply its conduct with the stipulations of the law. In short, it makes the law certain for the firms in the market and the courts and competition authorities to implement and adhere to their conduct accordingly. Second, it saves competition authorities and courts from tangled economic justifications to determine the pro-competitive aspect of the conduct.¹⁵¹ Per se rule needs only proof about its occurrence. Once the occurrence of the conduct is ascertained its

the 1930’s. In the post-1990’s competition law proliferated to the other parts of the world; the US law become a model to Latin American Countries, and the European Union law serves as a model to Africa while the Japan law become a model to Asian countries. See Joanna R. Shelton, *Competition Policy: What Chance for International Rules?* OECD Competition Law and Policy Division, OECD, P.2. See also Solomon Abay, *Competition Policy and Law*, Lecture Delivered at the School of Law, Bahir Dar University, 15 November, 2019. See again, *The effects of Anticompetitive Business Practices on Developing Countries and their Development Prospects*, Hassan Qaqaya and George Lipmle (edn’s), United Nations Conference on Trade and Development (UNCTAD), United Nations, New York and Geneva, 2008, p.v. See also Herbert J. Hovenkamp, *The Rule of Reason*, Faculty scholarship at Penn Law 1778, 2018, p.85. Available at <https://scholarship.law.upenn.edu/faculty_scholarship/1778>. [Last accessed on March 18, 2021]. [Hereinafter, H.J. Hovenkamp, *The Rule of Reason*].

¹⁴⁶ See Thomas B. Leary, *A Structured Outline for the Analysis of Horizontal Agreements*, p.7.

¹⁴⁷ See Reverso Online Translation Dictionary. Available at <<https://chrome.google.com/webstore/detail/reverso-%E2%80%93-translation-dic/onhiacboedfinnofagfgoanfedhmfab>>. [Last accessed on 24 March 2021].

¹⁴⁸ *Ibid.*

¹⁴⁹ See Alden F. Abbott, *A Brief Overview of American Antitrust Law*, the University of Oxford Centre for Competition Law and Policy, the Competition law and policy guest lecture programme –paper (L) 01/05, 2005, p.5. [Hereinafter, Alden F. Abbott, *A Brief Overview of American Antitrust Law*].

¹⁵⁰ *Id.*, p.6.

¹⁵¹ *Ibid.*

anticompetitive effect is legally presumed.¹⁵² The prudent question one might pose at this juncture is how can the law know the effect of those restraints (that are deemed per se illegal) without economic analysis? The US Supreme Court in one of its decisions raised the same issue and argued further economic inquiry is “so often fruitless when undertaken.”¹⁵³ Further, the anti-competitive effect of some restraints is vivid that ‘do not warrant the time and expense required for particularized inquiry into their effects.’¹⁵⁴ Therefore, it seems clear that in competition law some restraints are known for their anticompetitive result for the determination of which no further economic or other analysis is called for. In the current competition law philosophy, rule per se is deemed to be an exception to the general principle of the rule of reason.¹⁵⁵ The commonly cited examples of conducts prohibited under the per se rule are price-fixing conspiracies, market allocation agreements, some sorts of boycotts and concerted refusal to deal.¹⁵⁶

2.5.2 The Rule of Reason Standard

The OECD glossary of statistical terms defines the rule of reason as “a legal approach by competition authorities or the courts where an attempt is made to evaluate the pro-competitive features of a restrictive business practice against its anti-competitive effects to decide whether or not the practice should be prohibited.”¹⁵⁷ Some market restrictive practices *prima facie* give rise to competition issues that may be efficiency-enhancing when further examined. Thus, weighing the pro-competitive and anti-competitive aspects of the conduct is demanded to most of the competition law issues.¹⁵⁸ The rule of reason is nowadays the dominant standard in competition

¹⁵² See Herbert Hovenkamp, *The Rule of Reason*, the University of Pennsylvania Law School, Institute for Law and Economics, Research paper No.17-28, 2017, p.13. [Here in after, Herbert Hovenkamp, *The Rule of Reason*].

¹⁵³ See Alden F. Abbott, *A Brief Overview of American Antitrust Law*, p.6. The Supreme Court provides the explanation in the case between *Northern Pacific Railway Co. V. United States* (356 U.S.1, (1958). Available at <<https://supreme.justia.com/cases/federal/us/356/1/>> [Last accessed 25 May 2021].

¹⁵⁴ See Maurice E. Stuke, Does the Rule of Reason Violate Rule of Law? *UC Davis Law Review*, 2009, Vol.42, No.5, pp.1375-1490, at pp.1378-79. [Hereinafter, Maurice E. Stuke, Does the Rule of Reason Violate Rule of Law?].

¹⁵⁵ See Alden F. Abbott, *A Brief Overview of American Antitrust Law*, p.6.

¹⁵⁶ See Herbert Hovenkamp, *The Rule of Reason*, p.2.

¹⁵⁷ See Glossary of Industrial Organization Economics and Competition Law, compiled by R. S. Khemani and D. M. Shapiro, Commissioned by the Directorate for Financial, Fiscal and Enterprise Affairs, OECD, 1993. Available at <<https://stats.oecd.org/glossary/detail.asp?ID=3305>>. [Accessed on 18 March 2021]. [Hereinafter, OECD Glossary of Industrial Organization Economics and Competition Law].

¹⁵⁸ *Ibid.*

law.¹⁵⁹ Rule of reason is a lenient and flexible standard¹⁶⁰ that takes into account, among other things, the effect of the restraint; specific facts of the business; background (history) of the restraint; the rationales behind the restriction; the market structure of the industry; the benefit of the restraint (redeeming virtue); the objective of the parties; and the existence of other less restrictive alternatives (reasonable necessity) to weigh its effect on competition.¹⁶¹ Accordingly, there is no automatic exclusion of the conduct in the rule of reason standard of analysis. Despite the growing importance of the rule of reason standard of analysis, it is still confronted with severe critics from different dimensions. First, the rule of reason standard is cursed for being “vague and ambiguous” that is difficult for prospective compliance.¹⁶² That is to mean that the outcome of the conduct depends on the analysis of various economic, market and other factors that in turn makes the standard elusive for prospective alignment of the businessmen’s conduct to the prohibitions of the law. The second point of reproof is the costliness of the rule of reason analysis. Herbert Hovenkamp argued rule of reason demands “expert testimony, identifying the relevant market, as well as evidence that purports to measure actual anticompetitive effects.”¹⁶³ As a result, its cost of administration is difficult for courts and competition authorities to administer.¹⁶⁴

2.6 The Meaning of Agreement in Competition Law

The meaning of ‘agreement’ is seldom defined in competition law.¹⁶⁵ In competition law’s parlance, the agreement does not necessarily mean express or written expressions to limit competition between competitors. Lious Kaplov asserts that agreements subject to competition

¹⁵⁹ See John M. Newman, Procompetitive Justifications in Antitrust Law, p.1. See also Herbert Hovenkamp, *The Rule of Reason*, p.1.

¹⁶⁰ See John M. Newman, Procompetitive Justifications in Antitrust Law, p.8.

¹⁶¹ See Maurice E. Stuke, Does the Rule of Reason Violate Rule of Law? P.1379. See also Phillip Areeda, *The Rule of Reason in Antitrust Analysis*, p p.10-18.

¹⁶² See Maurice E. Stuke, Does the rule of reason violate rule of law? p.1374.

¹⁶³ See Herbert Hovenkamp, *The Rule of Reason*, p.13.

¹⁶⁴ See Andrew I. Gavil, Moving Beyond Caricature and Characterization: The Modern Rule of Reason in Practice, *Southern California Law Review*, 2012, Vol.85, Issue 3, pp.733-782, at p.733. Available at <https://heinonline.org/HOL/AuthorProfile?base=js&search_name=Gavil.%20Andrew&1==1600105256>.

[Accessed on 20 March 2021]. [Hereinafter, Andrew I. Gavil, Moving beyond Caricature and Characterization: The Modern Rule of Reason in Practice].

¹⁶⁵ See Competition Law and Responsible Business Conduct, Global Forum on Responsible Business Conduct, OECD Conference Center, 18-19 June 2015, Paris, France, p.8. Available at <<https://mneguidelines.oecd.org/global-forum/2015GFRBC-Competition-Law-RBC.pdf>> [Last accessed on 4 April 2021]. [Hereinafter, *Competition Law and Responsible Business Conduct*].

law do not necessarily be binding contracts.¹⁶⁶ Formal and binding contracts are not necessarily required for agreements among undertakings. The rationale is for some forbidden agreements like cartels or price-fixing; the agreement is not legally binding.¹⁶⁷ Even worse, parties may escape the law by “phrasing communications in the language of the declaration of unilateral intent” or other methods of disclaimer of an agreement that in effect paves the way for impunity.¹⁶⁸ Agreement in competition law encompasses both explicit and implicit agreements. Explicit agreements are overt agreements between competitors to limit competition via setting clear terms and conditions. Explicit agreements may be understood by third parties that are not parties to the agreement. An explicit agreement, nonetheless, may not necessarily be an “overt” agreement, one which can be observed by nonparties to the agreement.¹⁶⁹ Indeed, most agreements that give rise to anti-competitive practices tend to be covert arrangements that are not easily detected by competition authorities.¹⁷⁰ Interestingly, the fact that an agreement is covert does not bar the applicability of competition law.¹⁷¹ Had competition law been concerned only with overt agreements, much anti-competitive covert agreement would escape the punishment that in turn would defeat the whole vicissitudes of competition law. However, an implicit agreement is a consensus between competitors but cannot be understood by third parties (parties that are not part and parcel of the agreement).¹⁷² Accordingly, agreement in competition law means “unity of purpose or a common design and understanding or a meeting of minds”.¹⁷³ It indicates a common understanding or consensus between potential or actual competitors to restrain competition.¹⁷⁴ Thus, agreement in competition law has a broad notion. It encompasses a plethora of agreements (be it legally binding or not), written or oral, and the so-called gentlemen agreements.¹⁷⁵ Besides, a physical meeting of the parties is not expected but telephone

¹⁶⁶ See Louis Kaplow, On the Meaning of Horizontal Agreements in Competition Law, *California Law Review*, 2011, Vol.99, No.3, pp. 683-818 at pp.691-692. Available at <<https://www.jstor.org/stable/23014697>>. [Accessed on 13 January 2021]. [Hereinafter, Louis Kaplow, On the Meaning of Horizontal Agreements in Competition Law].

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ See *Competition Law and Responsible Business Conduct*, p.9.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

¹⁷³ See Joseph E. Harrington, Horizontal and Vertical Agreements: Differences between European Union and the United States, pp.7-27, at p. 9. Available at <<https://www.researchgate.net/publication/340121034>> [Last accessed on 10 March 2021]. [Hereinafter, J.E. Harrington, Horizontal and Vertical Agreements].

¹⁷⁴ *Ibid.*

¹⁷⁵ See United Kingdom Office of Fair Trading (OFT), *Agreements and Concerted Practices: Understanding Competition Law*, London, United Kingdom, December 2004, p.5. Available

calls and exchange of letters, emails etc. are sufficient.¹⁷⁶ Generally, agreement in competition law's parlance is somehow broader than other laws since the former engulfs both legally binding and non-binding agreements and agreements made through various modalities of communication.

2.7 Common Horizontal Collaborations in the Insurance Sector

In principle, competition law assumes that each firm in the market will act independently. One scholar in this regard opines “the guiding principle in the field of competition law is “...” the so-called ‘postulate of independence.’”¹⁷⁷ Meanwhile, competition law does not condemn all sorts of cooperation saving those that result in anti-competitive effects.¹⁷⁸ Accordingly, competing companies in a certain market are permitted to collaborate provided that they comply with the competition law's permissible exceptions.¹⁷⁹ Horizontal cooperation, according to the draft horizontal cooperation guideline of the Treaty on the Functioning of the European Union (TFEU), can have certain economic benefits.¹⁸⁰ In particular, it can be used for “sharing risks, save costs, increase investments, pool know-how, enhance product variety and quality, and launch innovation faster.”¹⁸¹ The same guideline while elucidating the possible dangers of cooperation mentioned that horizontal cooperation may also result in competition problems.¹⁸² Specifically, if cooperating companies use the cooperation as a shield for price-fixing, market sharing, and other anticompetitive restraints, cooperation would result in market distortions and

at<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/284396/oft401.pdf> [Last accessed on 4 April 2021]. [Herein after, Office of Fair Trading, Agreements and Concerted practices]. According to the office, the fact that the undertaking participated in the agreement in a limited manner, or participated as a result of pressure from other undertakings, or may not fully implement the commitments does not exonerate the undertaking from the penalties of competition law though may be useful to determine the quantum of punishment. *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ See Fabian Stancke, Our World Lost-Status and Prospects of the EU Competition Rules for the Insurance Sector after the Expiry of the BER, *Journal of European Competition Law and Practice*, 2017, Vol.8, No.8, pp.539-548, at p.540. Available at<<https://academic.oup.com/jeclap/article-abstract/8/8/539/4093020>> [Accessed on 2 April 2021]. [Hereinafter, Fabian Stancke, Our world Lost-Status and EU Competition Rules after Expiry of BER].

¹⁷⁸ See Frank H. Easterbrook, The Limits of Antitrust, *Texas Law Review*, 1984, Vol.63, No.1, pp.1-40, at 1. Available at< https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2152&context=journal_articles> [Accessed on 05 June 2021]. [Hereinafter, Frank H. Easterbrook, The Limits of Antitrust].

¹⁷⁹ *Id.*, pp.1-4.

¹⁸⁰ See EC Draft Guideline on the Applicability of Article 101 of TFEU, p.5ff.

¹⁸¹ *Id.*, p.5.

¹⁸² *Ibid.*

competition problems.¹⁸³ Prudent competition legislation is, therefore, expected to balance both the pro-competitive effects of the cooperation and the anti-competitive effects. Based on the rule of reason standard of analysis, most competition laws attempt to balance these interests.¹⁸⁴ The question worthy of raising here is on what areas firms are empowered to coordinate? And what are those attached conditions under which companies' are allowed collaboration? From the closer scrutiny of a plethora of literature, one can discern the following areas: research and development collaboration; standardization agreement; information exchange (access to data) relations; co-insurance and reinsurance arrangements; and production and purchasing agreements.¹⁸⁵

There are four cumulative conditions attached to horizontal collaborations: "efficiency gain", "indispensability", "pass-on to consumers" and "no elimination of competition."¹⁸⁶ Efficiency gain in this context engulfs collaborations that lead to either the increased quality of the good (service), reduction of cost to the company or customers, saves time or a combination of these.¹⁸⁷ The requirement of "indispensability", on the other hand, involves the cooperation should be of a nature that there is no other way of attaining the claimed efficiency. If the parties prove that "the data's type, aggregation, age, confidentiality and frequency of the exchange are of the type that carries the lowest risks indispensable for creating the claimed efficiency gains"¹⁸⁸, the condition of indispensability is deemed to be satisfied. The condition of "pass-on-to customers" is self-explanatory i.e. the efficiency gains attained through cooperation should benefit customers.¹⁸⁹ Finally, cooperation between competitors should not defeat the competition in the relevant market. For instance, the exchange of company level individualized data on future prices could facilitate price-fixing that eliminates competition at all.¹⁹⁰ All in all, horizontal collaboration

¹⁸³ *Ibid.*

¹⁸⁴ See Susan Beth Farmer, Competition and Regulation in the Insurance Sector: Reassessing the McCarran - Ferguson Act, *Oregon Law Review*, 2011, Vol.89, No.____, pp.915-950, at p.918. [Hereinafter, S.B. Farmer, Competition and Regulation in the Insurance Sector].

¹⁸⁵ See R.H. Jerry II, The Antitrust Implications of Collaborative Standard Setting, *Infra note*, p.407 and ff. See also EC Draft Guideline on the Applicability of Article 101 of TFEU, p.26 and the following narrations.

¹⁸⁶ See EC Draft Guideline on the Applicability of Article 101 of TFEU, pp.25-27.

¹⁸⁷ *Id.*, p.25. In the general economic parlance efficiency refers to a market outcome in which "resources are employed to the best possible use and social welfare is maximized." See Robert W. Klein (PhD.), *A Regulator's Introduction to the Insurance Industry*, 2nd edn, National Association of Insurance Commissioners, Georgia State University, USA, 2005, p. 225. [Hereinafter, *A Regulator's Introduction to the Insurance Industry*].

¹⁸⁸ See EC Draft Guideline on the Applicability of Article 101 of TFEU, p.26.

¹⁸⁹ *Ibid.*

¹⁹⁰ *Id.*, pp.25-27.

should pass through these four cumulative tests to be considered as efficiency-enhancing horizontal cooperation. The subsequent parts of the study perused each type of horizontal collaboration distinctively.

2.7.1 Agreement on Standardized Policy Terms and Conditions

It is not uncommon for competition and other regulatory laws to permit agreement (coordination) between competitors in setting standards on policy terms and conditions. Historically, before the advent of competition law in the legal system of many countries, there was a long tradition of collaboration among insurers in setting premiums (rates) besides policy terms and conditions.¹⁹¹ Competition law provides some exemptions in circumstances where ‘compelling evidence of unworkability of competition or a clearly paramount social purpose’ exists, and any exemptions should use ‘the least anti-competitive method of achieving the regulatory objective.’¹⁹² Accordingly, cooperation is possible to exploit certain vital purposes that are hardly attainable via competition. In the insurance industry, a policy is a contract concluded between the insured, one who seeks insurance service, and the insurer, the company offering insurance service.¹⁹³

In recent years¹⁹⁴, the European Commission’s block exemption regulations (BER) empower insurance companies of the area to be exempted from various competition concerns.¹⁹⁵ Among those major exemptions, standard policy conditions (SPCs) were the notable ones.¹⁹⁶ Standardization is beneficial to both the industry and the consumers. Presumably, consumers are not individuals that know the specific details of tangled terms incorporated under the insurance

¹⁹¹ See Harald Espeli, *Insurance Cartels and State Policies in Norway*, P.236. The study shows that in Norway the state itself was active in risk evaluation through the fire insurance enterprise. *Ibid*.

¹⁹² See S .B. Farmer, *Competition and Regulation in the Insurance Sector*, p.920.

¹⁹³ See J. François Outreville, *Theory and Practice of Insurance*, 1st ed., Springer US, United States of America, 2021, p.131. Available at <https://www.researchgate.net/publication/302362509_Insurance_Concepts> [Last accessed on 4 July 2021].

¹⁹⁴ Until 2010, the EU exempted insurance companies to agree on standardized insurance terms and conditions. However, after 2010 standard terms and conditions of policy were required to pass individual assessment by the relevant authority as opposed to the previous exemption. See Fabian Stancke, *Our World Lost-Status and EU Competition Rules after Expiry of BER*, p.540. See also Norton Rose Fulbright, *Insurance Focus: Our Analysis of Key Legal Developments in the Insurance Industry over Recent Months*, April 2016, p.7. Available at <<https://www.nortonrosefulbright.com/en/knowledge/resources-and-tools/reinsurance/insurance-focus---global-developments>> [Last accessed on 20 March 2021]. [Hereinafter, Norton Rose Fulbright, *Insurance Focus*].

¹⁹⁵ See Fabian Stancke, *Our World Lost-Status and EU Competition Rules after Expiry of BER*, pp.539-544.

¹⁹⁶ See Norton Rose Fulbright, *Insurance Focus*, pp.6-7.

policy. Moreover, standardization makes it easier for the consumer to compare the prices of substitute products.¹⁹⁷ Conversely, some scholars argued that any underwriting collaboration among insurers has a similar effect to the so-called “concerted refusal to deal”, “group boycotting”, and “price-fixing.”¹⁹⁸ Further, European Union also lifted the insurance block exemption regulation that permits insurance companies to collaborate on standard terms and conditions of an insurance policy.¹⁹⁹ The assumption was these agreements are not specific to the insurance sector and hence allowing the sector such exemption is not justified in the presence of general horizontal cooperation guidelines.²⁰⁰ The effect of the EU decision does only terminate the sector-specific block exemptions (total exoneration from competition law concerns) and insurance companies can still benefit through the horizontal cooperation guideline of the union.²⁰¹ Despite this controversy, the current prevailing practice is towards the use of non-binding standard terms and conditions of an insurance policy.²⁰² The issue of unification or homogeneity of contract conditions is stipulated in the competition law of some countries. For instance, the Bulgarian competition legislation²⁰³ under Article 15 declared the following.

- (1) *Undertakings which offer the conclusion of identical contracts, containing general conditions, may unify those general conditions in advance provided that they do not restrict the free negotiation of prices and do not affect the interests of consumers.* (2.) *The unification of general conditions is permitted only with an authorization of the Commission, which shall be given within two months following the submission of the request of the undertakings under paragraph 1.* [Emphasis added].

¹⁹⁷ See Robert H. Jerry II, The Antitrust Implications of Collaborative Standard-Setting by Insurers Regarding the Use of Genetic Information in Life Insurance Underwriting, *Connecticut Insurance Law Journal*, 2003, Vol.9, No.2, pp.397-441 at p.407. Available at < <https://scholarship.law.missouri.edu/facpubs/924> > [Last accessed on 20 March 2021]. [Hereinafter, R.H. Jerry II, The Antitrust Implications of Collaborative Standard-Setting].

¹⁹⁸ See R.H. Jerry II, The Antitrust Implications of Collaborative Standard -Setting, p.417. The author scrutinizes the use of genetic information in the insurance sector. After thorough analysis the scholar arrives at a conclusion that a case by case scrutiny based on rule of reason is required. *Ibid.*

¹⁹⁹ See Fabian Stancke, Our World Lost-Status and EU Competition Rules after Expiry of BER, pp.540-542.

²⁰⁰ See Norton Rose Fulbright, Insurance Focus, p.7. See also Fabian Stancke, Our World Lost-Status and EU Competition Rules after Expiry of BER, p.540.

²⁰¹ See Fabian Stancke, Our world lost-Status and EU Competition rules after expiry of BER, pp.540-541.

²⁰² See Solomon Abay, *Financial Market Development, Policy and Regulation: The International Experience and Ethiopia's Need for Further Reform*, PhD. Dissertation, The University of Amsterdam, Faculty of Law, 2011, [Unpublished], p.90. Available at < https://pure.uva.nl/ws/files/1512830/89134_thesis.pdf > [Last accessed on 3 April 2021]. [Hereinafter, Solomon Abay, *Financial Market Development, Policy and Regulation*].

²⁰³ See Bulgarian Law on the Protection of Competition (LPC), 1998, State Gazette No.52, Article 15, in United Nations Conference on Trade and Development, Hand Book on Competition Legislation: Consolidated Report (2001-2009), United Nations, New York and Geneva, 2009, p.81. [Hereinafter, Bulgarian Law on the Protection of Competition].

Thus, the law prohibits only those undertakings that limit the “free negotiation of price” and that affect the interest of consumers. The message is pretty clear; standardizations that affect the free negotiation of the price that in turn affects the interest of consumers are outlawed. Generally, the standardization of policy terms and conditions, though not mandatorily required, it is permissible in the insurance industry provided that the interest of customers remain intact.

2.7.2 Information Exchange (Access to Data) Collaboration

Insurance by its nature demands big data. Insurance experts stated that “data lies at the heart of insurance.”²⁰⁴ This is said because the more the insurance company obtains data, the more accurate its rate determination would be. Robert Bork, in his book titled “*The Antitrust Paradox*”, argued that “the closer the members of the industry come to maximizing their profits, the closer they come to maximizing the welfare of consumers [because it is an]obvious fact that more efficient methods of doing business are as valuable to the public as they are to businessmen.”²⁰⁵ As it was elaborated in the discussions made above, certain cooperative arrangements enhance economic efficiency (which is also one of the goals competition law strives to achieve), while some others might be used for the facilitation of collusion among competitors.²⁰⁶ Therefore, information sharing unless it is properly regulated would result in an anti-competitive effect. However, inherently, there are some exceptional features of the insurance business that demand the exchange of information. Insurance needs assessment of the uncertain risk that may materialize in the future. This makes insurance cost determination uncertain.²⁰⁷ The unilateral actions of each insurance company would result in either excessive risk price (premium) or lower risk price which eventually affects the consumer and the insurance

²⁰⁴ See Marine Corlosquet-Habat and Jacques Janssen (edn.), *Big Data for Insurance Companies*, 1st ed., ISTE Ltd. And John Wiley & Sons Inc., Gloucester, United Kingdom, and Melbourne, Australia, 2018, p.20. [Hereinafter, Marine Corlosquet-Habat and Jacques Janssen (edn.), *Big Data for Insurance Companies*].

²⁰⁵ See Riza Dibadj, Conscious Parallelism Revisited, *San Diego Law Review*, 2010, Vol.47, No. __, pp.589-640 at pp.628-629. Available at <<https://digital.sandiego.edu/cgi/viewcontent.cgi?article=2677&context=sdlr>> [Last accessed 02 June 2021]. [Hereinafter, Riza Dibadj, Conscious Parallelism Revisited]. The argument of the scholar seems to refer only those collaborations that enhance efficiency. This is obviously because all collaborations are not efficiency enhancing but only selected ones that are elucidated in this section of the research.

²⁰⁶ See Thomas A. Piraino Jr., Beyond Per se, Rule of Reason or Merger Analysis: A New Antitrust Standard for Joint Venture, *Minnesota Law Review*, 1991, Vol.76, No.1, pp.1-73, at p.2. Available at <<https://scholarship.law.umn.edu/mlr/2439>>. [Last accessed on 12 March 2021]. [Hereinafter, T.A. Piraino, Beyond Per se, Rule of Reason or Merger Analysis].

²⁰⁷ See Eithne McCarthy and Laura Stefanescu, The New Block Exemption for the Insurance Sector, *Competition Policy Newsletter*, (November 2, 2010), p.7. [Hereinafter, Eithne McCarthy and Laura Stefanescu, The New Block Exemption for the Insurance Sector].

company respectively.²⁰⁸ This demands some sort of cooperation among insurers to determine the real cost of risk. Besides, it is important for the smaller companies and other insurers that are new entrants to the market. Owing to this utility, the incumbent companies are required to share the information/data with them.²⁰⁹ In connection to this collaboration, one institution ascertained that the exchange of information like historical statistical calculations, mortality tables and frequency of illness of life insurance, and accident probabilities can improve the efficiency and accuracy of risk rating for insurance companies that can also simplify market entry and in consequence benefit consumers.²¹⁰ Accordingly, information exchange is relevant in the insurance sector to minimize, if not avoid, uncertainties and putting premium computations on certainty.

The other issue worthy of further elaboration is the type of data shared (exchanged) between insurance companies. If competition law leaves everything to the whim of insurers, they might collude to fix prices, or divide the market or else engage in some sort of predatory pricing, which are acts condemned by competition law. In addition, as one author argued “certain types of individualized information exchanges on future quantities or price, especially when individualized, will almost always be prohibited”²¹¹ as it is prone to price-fixing cartels or collusion. Consequently, insurance companies are permitted to share “only aggregated historical information made available on reasonable and non-discriminatory terms.”²¹² Specifically, common standards on “fire extinguishment, such as geographical setting, quality of buildings concerning fire diffusion, commercial activity, and water supply” can be areas where insurance companies are permitted to cooperate.²¹³ Besides, using a common mortality table, ‘frequency of illness’ and ‘accident’ is relevant to accurately set a premium for life insurance.²¹⁴ Therefore, sharing aggregated, as opposed to individualized data, before underwriting enables insurers to determine rates closer to certainty and know the specific and profitable way of finding the

²⁰⁸ See EC, Consultation on Insurance Block Exemption Regulation, pp.10&12.

²⁰⁹ See Eithne McCarthy and Laura Stefanescu, *The New Block Exemption for the Insurance Sector*, p.7.

²¹⁰ See European Commission, Consultation on the Insurance Block Exemption Regulation (IBER), p.12. Available at <<https://cefor.no/industry-policy/news/archive/consultation-on-insurance-block-exemption-regulation/>> [Last accessed on 5 April 2021]. [Hereinafter, EC, Consultation on Insurance Block Exemption Regulation].

²¹¹ See David Wood, *Information Exchange*, GCR Know How IP & Antitrust 2018, European Union, 2019, p.4. [Hereinafter, David Wood, *Information Exchange*].

²¹² See Eithne McCarthy and Laura Stefanescu, *The New Block Exemption for the Insurance Sector*, p.7.

²¹³ See Harald Espeli, *Insurance Cartels and State Policies in Norway*, p.225.

²¹⁴ See EC, Consultation on Insurance Block Exemption Regulation, p.12. See also H. Espeli, *Insurance Policies and State Policies in Norway*, p. 236.

customers characteristics. As it is succinctly stated by two scholars, “information that accrues after purchase may be used only to lock the barn after the horse has been stolen.”²¹⁵ That is to mean that prior collaboration before underwriting enables insurers to obtain accurate risk classification. The other issue is the manner of exchange of information (data). In most cases, information exchange is made through the trade association (in the insurance company the insurers association) or the governmental regulatory organ or else through an information exchange website available to the public.²¹⁶ However, the competition authority should closely supervise the type of data shared between insurers to avoid anti-competitive tendencies.

2.7.3 Cooperation in Research and Development (R&D)

The other area where competitors²¹⁷ are allowed to collaborate horizontally is research and development. Innovation and the use of new technologies is one area in which companies compete in the market. Cooperation in research and development (R&D) is crucial to secure market share as a result of new technologies or products.²¹⁸ R&D collaboration might be made either to introduce new products or to improve the existing ones.²¹⁹ In some countries, competitors are not only permitted to horizontally collaborate in competition law but also enjoy incentives in the tax system (indirect subsidy) and sometimes direct subsidy is provided for such collaboration.²²⁰ This is because of the assumption that R&D collaboration is meritorious for the industries to introduce new products or to produce the existing ones at low cost that in turn

²¹⁵ See Michael Rothschild and Joseph Stiglitz, Equilibrium in Competitive Insurance Markets: An Essay on the Economics of Information Exchange, *The Quarterly Journal of Economics*, 1976, Vol.90, No.4, pp. 629-649 at p. 632. Available at <<http://www.jstor.org/stable/1885326>> [Last accessed on 1 January 2021]. [Hereinafter, M. Rothschild and J. Stiglitz, Equilibrium in Competitive Insurance Market].

²¹⁶ See Organization for Economic Co-operation and Development (OECD), Directorate for Financial and Competition Affairs Competition Committee, *Roundtable on Information Exchanges between Competitors under Competition Law*, OECD, Paris, 2010, pp.1-15.

²¹⁷ It should be noted here that research and development collaboration can be made not only with competitors, but also with universities, customers, suppliers and research institutes. See Erica Raquel Badilo, and *et al*, *Cooperation in R&D, Firm Size and Type of Partnership: Evidence for the Spanish Automotive Industry*, Research Institute of Applied Economics Regional Quantitative Analysis Research Group, Working Paper 2014/30 and 2014/17, p. 4. Available at <<https://www.emerald.com/insight/content/doi/10.1108/EJMBE-07-2017-008/full/html>>. [Last accessed on 05 April 2021]. However, in this study research and development collaboration among competitors is the concern.

²¹⁸ See Michael L. Katz and Janusz A. Ordover, R&D Cooperation and Competition, Brookings Papers: Microeconomics, 1990, pp.137-203, at p.139. Available at <<https://www.brookings.edu/bpea-articles/rd-cooperation-and-competition/>> [Last accessed on 8 April 2021]. [Hereinafter, Michael L. Katz and Janusz A. Ordover, R&D Cooperation and Competition].

²¹⁹ See EC Draft Guideline on the Applicability of Article 101 of TFEU, pp.31-32.

²²⁰ See Michael L. Katz and Janusz A. Ordover, R&D Cooperation and Competition, p.140. The US government, for instance, spent \$124.9 billion in private research and development in 1988, out of which 47% is direct subsidy from the federal government. *Ibid*.

warrant an incentive from the state.²²¹ R&D cooperation is subsumed under competition law's exemption of agreements that enhance efficiency. However, in the course of R&D cooperation competitors may exchange sensitive data that allows them to fix prices, allocate customers, or limit output.²²² Therefore, the competition authorities are advised to come up with a specialized cooperative guideline or directive that delineates areas that might endanger competition. This is relevant for competition authority's ex-post intervention and it also enables competitors to refrain from anticompetitive tendencies in the process of collaboration.²²³ In the same vein, in the insurance industry, R&D collaboration is useful for appropriate risk compartmentalization and introducing new insurance services.²²⁴ Collaboration is useful because if the insurance service is completely new, insurers do not have historical data depending on which they can set the future premium. Furthermore, R&D is also vital for unconventional risks for which the frequency of occurrence and magnitude of risk is not well known.²²⁵ Here again, a clear guideline or directive that announce permissible and restrictive collaborations is expected from the competition authority to ward off the anti-competitive behaviour of competitors. The tests of indispensability, efficiency gain, pass-on to customers and the absence of elimination of competition shall also be satisfied.²²⁶

2.7.4 Reinsurance and Coinsurance Pools

Risks can be broadly pigeonholed into conventional and unconventional risks.²²⁷ Unconventional risks, huge risks that cannot be covered by a single insurer alone, require the cooperation of multiple insurance companies because either the loss if it materializes is too large for a single company to absorb ("capacity constraint") or the limited knowledge about it ("knowledge

²²¹ See Michael L. Katz and Janusz A. Ordovery, R&D Cooperation and Competition, p.137.

²²² See EC Graft Guideline on the Applicability of Article 101 of TFEU, pp.33-34.

²²³ A horizontal cooperation guideline in general and R&D collaboration guideline is introduced in the USA, Japan, and EU. Specifically, EU comes up with a council regulation on research and development agreement to regulate the anticompetitive dangers associated with R&D collaboration. See EC Draft Guideline on the Applicability of Article 101 of TFEU, pp.6&34.

²²⁴ See Donnatela Porrini, Risk Classification Efficiency and the Insurance Market Regulation, *Risks Open Access Journal*, 2015, Vol. 3, No. __, pp.445-454 at p.450. Available at <<http://10.3390/risks3040445> > [Last accessed on 20 January 2021]. [Hereinafter, D. Porrini, Risk Classification Efficiency and the Insurance Market Regulation].

²²⁵ See EC Draft Guideline on the Applicability of Article 101 of TFEU, pp.31-34.

²²⁶ *Id.*, pp.36-37.

²²⁷ See European Commission, *Different Forms of Cooperation between Insurance Companies and their Respective Impact on Competition: Studies on Issues Pertaining to the Insurance Production Process with regard to the Application of the Insurance Block Exemption Regulation (IBER)*, European Union, 2016, pp.15-16. [Hereinafter, European Commission, *Different Forms of Cooperation between Insurance Companies*].

constraint’).²²⁸ Co (re) insurance pools are essential for insuring risks that are uninsurable because of “individual volatility, moral hazard, the small size of population or excessive claims cost, or to subsidize cover for public policy reasons.”²²⁹ Commonly, coinsurance and reinsurance pools are forms of cooperation for large and unconventional risks. Needless to mention, insurers engage in reinsurance and coinsurance pools out of necessity.²³⁰ Reinsurance, according to the dictionary of insurance terms, is a “form of insurance that insurance companies buy for their protection, “a sharing of insurance.” An insurer (*the insured*) reduces its possible maximum loss on either an individual risk “...” or a large number of risks “...” by giving (*ceding*) a portion of its liability to another insurance company (*the reinsurer*).”²³¹ Reinsurance is, thus, an insurer’s insurance that enables them to further diversify their risk exposure. Insurance companies can transfer their risk in the same way primary insurers transfer their loss by paying a premium to the reinsurer to cover a portion of their loss.²³² Reinsurers are independent companies the shareholdings of which mostly are held by insurance companies (primary insurers).²³³

The parties to a reinsurance contract are the primary insurer and the reinsurance company whereby the latter agrees to provide cover to the primary insurer under a contract of reinsurance.²³⁴ Reinsurance is useful for insurance companies to diversify their risk portfolio; because the reinsurer takes a share of the risk and, of course, a portion of the premium to cover losses when a risk (misfortune) materializes in the underwritings of the primary insurer.²³⁵ Thus, the reinsurer has no relation with the original insured. Reinsurance is useful for expanding the capacity of the insurance company, “stabilize its underwriting results; finance its expanding volume; secure catastrophic protection against shock loss; withdraw from a class or line of

²²⁸ See European Commission, *Different Forms of Cooperation between Insurance Companies*, p.16. The latter is also named assessment constraint. It may be due to limited understanding about the risk, probability of occurrence or lack of historical data. *Ibid*.

²²⁹ See European Commission, *Study on Co (re) Insurance Pools and an Ad-hoc Co (re) Insurance Agreements on the Subscription Market*, European Commission, Brussels, p.vi. Available at <https://ec.europa.eu/competition/sectors/financial_services/KD0414707ENN.pdf> [Last accessed 22 March, 2021]. [Hereinafter, European Commission, *Study on co (re) Insurance Pools*].

²³⁰ See George Blazenko, The Economics of Reinsurance, *The Journal of Risk and Insurance*, 1986, Vol.53, No.2, pp.258-277, at pp.258-259. [Hereinafter, George Blazenko, *The Economics of Reinsurance*].

²³¹ See Harvey W. Rubin, *Dictionary of Insurance Terms*, p.424.

²³² *Id*, p.259.

²³³ See, for instance, the website of Ethiopian Reinsurance S.C. in the link < <https://www.ethiopianre.com/>> [Last accessed July 02, 2021].

²³⁴ See Colin Edelman QC and Andrew Burns, *The Law of Reinsurance*, 2nd edn., Oxford University Press, Oxford, United Kingdom, p.50. [Hereinafter, Colin Edelman QC and Andrew Burns, *The Law of Reinsurance*].

²³⁵ *Id*, p.48.

business or a geographical area within a relatively short time, and share large risks with other companies.”²³⁶

Coinsurance, on the other hand, indicates a situation whereby two or more insurers jointly provide cover for unconventional or large risks in a separate contractual relationship with the insured that makes insurers’ liable for their respective share of the claim.²³⁷ Reinsurance and coinsurance are two different techniques of collaboration. First, reinsurance provides coverage for a risk that has already been insured by the primary insurer, while coinsurance is a sharing of risk among multiple insurers.²³⁸ Second, reinsurance involves a transfer of the portion of risk assumed by the primary (direct) insurer to another reinsurer. But, in coinsurance, all parties to the coinsurance are direct insurers for the portion of each insurer has a direct relation with the primary insured.²³⁹ The most common unconventional risks that require cooperation among various insurance companies (either in reinsurance or coinsurance) include; “cybersecurity, natural catastrophe, nuclear incidents, terrorism and ecological damage, for instance, due to large-scale industrial accidents”²⁴⁰ and floods, whether insurances etc.²⁴¹ The insurance market is said to be efficient when there is an opportunity for insurers to further diversify their risk through reinsurance to decrease the risk of insolvency and rescue it from unanticipated underwriting losses and other catastrophes in the underwriting results.²⁴²

In the modern sophisticated business world, the insurance industry is deemed to be the last resort that protects other financial sectors like banks from risks.²⁴³ Coinsurance and reinsurance pools, on the other hand, are vital to save the insurer itself from risks and give insurance protection for

²³⁶ See Harvey W. Rubin (PhD.), *Dictionary of Insurance Terms*, pp.424-425.

²³⁷ See European Commission, Study on Co (Re) Insurance Pools, pp.v&vi.

²³⁸ See WISH POLICY.com, pp.2-3. Available at <<https://www.wishpolicy.com/articles/difference-between-coinsurance-and-reinsurance/>> [Last accessed on 20 March 2021]. [Hereinafter, WISH POLICY.com].

²³⁹ *Ibid.*

²⁴⁰ Refer, European Commission, Different Forms of Cooperation between Insurance Companies and their Respective Impact on Competition, p. 93.

²⁴¹ See Professor Paula Jarzabkowski, and *et al*, Global Reinsurance Master Class Series: Strategic Thinking for the Insurance Industry, Masterclass 1- *Re-Thinking Reinsurance: How to Shape Your Future through Strategic Understanding of Global Market Forces*, Sponsored by ESRC, WCI and IICI, Cass Business School University of London, London, UK, p.1. Available at <https://www.cass.city.ac.uk/_data/assets/pdf_file/0003/401088/complete-reinsurance-masterclass-series-cass-knowledge.pdf> [Last accessed on 10 May, 2021].

²⁴² See Robert W. Klein (PhD.), *A Regulator’s Introduction to the Insurance Industry*, pp. 30-31.

²⁴³ See Habtamu Simachew (PhD), *Financial Markets and Institutions*, Lecture Delivered at the School of Law, Bahir Dar University, 20 November 2019.

unconventional risks that goes beyond the insurer's "risk appetite."²⁴⁴ The failure of an insurance company in effect would result in the so-called "domino effect" or contagion risk that would contaminate other sectors.²⁴⁵ Reinsurance and coinsurance pools are designed to prevent such risk exposure. Meanwhile, seen from the perspective of competition law, coinsurance and reinsurance collaborations may lead to the transparency of prices charged and agreed by an insurer with its clients.²⁴⁶ This coordination that involves regular and frequent sharing of information might have the effect of disclosing the "market positions and strategies" of competitors that in consequence would harm competition.²⁴⁷ To prevent such anti-competitive tendencies, areas of collaboration are statutorily limited and the conditions of coordination elaborated before i.e. indispensability, pass on to consumers, and the absence of elimination of competition are required to be satisfied.²⁴⁸

2.8 The Justifications for Horizontal Cooperation in the Insurance Sector

In addition to the reasons elaborated in the previous discussions, there are also other justifications peculiar to the insurance sector that demand cooperation among insurers. Insurance is one of the riskiest businesses which operate in the capital of its clients to compensate for losses.²⁴⁹ Furthermore, insurance clients (insured) have a better knowledge about their risk exposure than the insurer. In the insurance market, price (premium) is determined in advance at the time the insured purchase the insurance policy. Thus, as one author rightly put it fixing the insurance price is "an enigma for an insurer."²⁵⁰ Information asymmetry, which is one of the reasons for market failure, is prevalent in the insurance sector.²⁵¹ In the subsequent discussions,

²⁴⁴ See Max J. Rudolph, *Reviewing Systemic Risks within the Insurance Industry*, under the sponsorship of Society of Actuaries, 2017, p.22. Available at <<https://www.soa.org/globalassets/assets/files/research/projects/reviewing-systemic-risk.pdf>> [Last accessed on May 12, 2021]. [Hereinafter, Max J. Rudolph, *Reviewing Systemic Risks within the Insurance Industry*].

²⁴⁵ *Ibid.*

²⁴⁶ See Commission of the European Communities, Commission Staff Working Document, *Sector Inquiry under Article 17 of the Regulation (EC) No.1/2003 on Business Insurance*, Final Report, Brussels, 2007, pp.36-37.

²⁴⁷ *Ibid.*

²⁴⁸ *Id.*, p.36-38.

²⁴⁹ See Zdeněk Rybák, *Information Asymmetry on the Czech Insurance Market*, p.1. Available at <www.vse.cz> [Last accessed on May 10, 2021]. [Hereinafter, Zdeněk Rybák, *Information Asymmetry on the Czech Insurance Market*].

²⁵⁰ See Chiraz FEKI, *Information Asymmetry and Technical Efficiency: Case of a Panel of Tunisian Insurance Companies*, *Theoretical and Applied Economics*, 2016, Vol. XXXIII, No.4, pp.299-314, at p.300. [Hereinafter, Chiraz FEKI, *Information Asymmetry and Technical Efficiency*].

²⁵¹ See Zdeněk Rybák, *Information Asymmetry on the Czech Insurance Market*, p.2.

reasons associated with information asymmetry as a justification for horizontal coordination between insurers are provided.

2.8.1 Asymmetry of Information

Information asymmetry indicates a situation in which one market competitor has better information than the other party.²⁵² Perhaps, had all parties been aware of the clandestine information, the contract (deal) might not be concluded or at least its entire terms and conditions would be different.²⁵³ Informational asymmetry is one of the well-known causes for market failure that consequently leads to inefficiency of production.²⁵⁴ The insurance market is prone to the problem of information asymmetry. Insured (buyers of an insurance policy) may have a tendency (an incentive) to hide their actual risk exposure to obtain a lower premium.²⁵⁵ Insurance companies, in the prevalence of informational imbalance, might probably charge a similar price for products and spread the costs to the various categories of policyholders to use their profits from low-risk customers to offset the losses from high-risk customers.²⁵⁶ This, in turn, might affect low-risk customers and the profitability or at worst the solvency of the insurance.²⁵⁷ Therefore, the need for cooperation in the insurance market can be justified by the existence of asymmetric information. Further, the asymmetry of information had other byproducts that deserve separate scrutiny- adverse selection and moral hazard.²⁵⁸

2.8.1.1 Adverse Selection

The first problem of information asymmetry is an adverse selection that occurs when ‘high-risk individuals are more likely to purchase insurance than low-risk individuals.’²⁵⁹ The insured, as it is mentioned time and again, has a better knowledge of his risk exposure than the insurer. Research has shown that other things being equal, persons with greater accident probabilities need more insurance than those with lesser exposure.²⁶⁰ If the same amount of risk premium is

²⁵² *Ibid.*

²⁵³ *Ibid.*

²⁵⁴ *Id.*, p.1. The other remaining reasons of market failure are imperfect competition, externalities, and public goods.

Ibid.

²⁵⁵ European Commission, Different Forms of Cooperation between Insurance Companies and their Respective Impact on Competition, p. 18.

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

²⁵⁸ See Robert W. Klein (PhD.), *A Regulator's Introduction to the Insurance Industry*, p.10.

²⁵⁹ *Ibid.*

²⁶⁰ See M. Rothschild and J. Stiglitz, *Equilibrium in Competitive Insurance Markets*, p.632.

charged for both low and high risks, then, lower-risk individuals would be expected to pay more than those of higher-risk individuals.²⁶¹ Consequently, low-risk individuals may leave the company and the company's remaining members would only be high-risk individuals.²⁶² This ultimately shrinks the company and eventually, the insurance pool can "even collapse."²⁶³ Insurance companies can avoid the problem of adverse selection through accurate risk compartmentalization or risk classification, which aims to categorize those with a similar probability of loss exposure to the same class and charging the same rate through sharing information and strategic alliances.²⁶⁴ The partition of insured into various separate risk pools according to their particular risk exposure enables insurers to acquire premiums commensurate to the loss the insured may suffer.²⁶⁵ As a result, low-risk customers that might otherwise find insurance too expensive would get insurance service. In turn, this will decrease the availability of insurance for the wider society.²⁶⁶ Charging a premium commensurate to the level of risk exposure demands acquiring the necessary information about the risk exposure of the risk category²⁶⁷, which is unlikely to be obtained from the insured. To escape such a dilemma, insurance companies need to share some information that enables them to determine actual premium attractive to both high and low-risk individuals²⁶⁸ provided that the appropriate precautions stated under information exchange collaboration (previously discussed issue²⁶⁹) are satisfied.

2.8.1.2 Moral Hazard

For economists, moral hazard in insurance indicates the circumstance whereby purchasing insurance reduces the insured's incentive to take precautions.²⁷⁰ It, therefore, connotes the opportunistic behaviour of the insured (especially in liability insurance) as a result of the

²⁶¹ See Robert W. Klein (PhD.), *A Regulator's Introduction to the Insurance Industry*, p.10.

²⁶² *Id.*, pp.10-11.

²⁶³ *Ibid.*

²⁶⁴ Donnatela Porrini, Risk Classification Efficiency and the Insurance Market Regulation, p.447.

²⁶⁵ *Id.*, p.448.

²⁶⁶ *Ibid.*

²⁶⁷ *Ibid.*

²⁶⁸ *Id.*, p. 447.

²⁶⁹ The type of data exchanged between insurers and other specific conditions are illuminated under section 2.5.2 above.

²⁷⁰ Christopher Parsons, Moral Hazard in Liability Insurance, *The Geneva Papers on Risk and Insurance*, 2003, Vol. 28 No. 3, pp. 448-471, at pp. 451-452. Available at <<https://www.jstor.org/stable/pdf/41952705.pdf?refreqid=excelsior%3Ae9c7442ba79afc4f87193f1c6a449ee>> [Last accessed on 19 April 2021]. [Hereinafter, Christopher Parsons, Moral Hazard in Liability Insurance].

existence of insurance.²⁷¹ A moral hazard is a situation that occurs when the insured benefits (profits) from causing harm and filing a claim or when the insured's property value is greater than the actual market value of the property.²⁷² This is to mean that unless the insurance companies are capable of valuing the appropriate value of the property and the approximate probability of loss occurrence, a situation called moral hazard would invade the insurance market. Despite the existence of some preventive measures like the charging of higher premium to set off the loss; giving premium reduction for prevention or safety measures; setting particular terms and conditions; and decline from insuring when a moral hazard is more serious, the efficient solution is supposed to be cooperation between insurance companies in the form of exchange of data and other sorts of strategic alliances to determine the actual amount of premium based on the specific risk exposure of the insured.²⁷³

2.8.2 The Prospective Nature of Insurance Cost Determination

Cost determination involves the assessment of the amount the insured shall pay to finance the loss protection or the potential insurance benefits including administrative expenses.²⁷⁴ All issues involving cost determination such as the amount of premium the insured had to pay in advance, the benefits that will be paid to the insurer upon the occurrence of loss, and the insurer's expense are all prospectively determined at the time the insured purchases insurance policy.²⁷⁵ The prospective nature coupled with uncertainties of forecasting future events makes premium determination a strenuous task. Moreover, the competitive environment in the insurance market obliges the insurer to consider other strategic actions of its rivals that ultimately complicate the cost determination of the insurance company.²⁷⁶ Thus, appropriate and scientific cost determination needs to be made to balance the interest of the two parties i.e. the insurer and the insured. To resolve the problem of uncertainty arising out of the prospectiveness of the insurance cost determination, insurers are typically allowed to utilize "its historical data and the industry historical data"²⁷⁷ in the rating. Insurers with a large market share are prone to employ their historical data more heavily than the companies with a smaller volume of business and new

²⁷¹ *Id*, p.452.

²⁷² Robert W. Klein (PhD.), *A Regulator's Introduction to the Insurance Industry*, pp.11-12.

²⁷³ *Id*, p.12.

²⁷⁴ *Id*, p.19.

²⁷⁵ *Id*, pp.19-20.

²⁷⁶ *Id*, p.19.

²⁷⁷ *See* Eithne McCarthy and Laura Stefanescu, *The New Block Exemption for the Insurance Sector*, p.7.

entrants. This is obviously because these companies have less experience and corollary to this fewer exposure to risk that in turn makes reliance on their historical data less credible.²⁷⁸ But, collaboration among insurers to exchange relevant information would reduce such problems to a significant scale.

²⁷⁸ *Ibid.*

CHAPTER THREE

HORIZONTAL COMPETITION IN THE ETHIOPIAN INSURANCE SECTOR: A CRITICAL ANALYSIS

3.1 Introduction

The previous chapter of this thesis focuses on the general and theoretical aspects of horizontal competition. This chapter in turn deals with the horizontal competitive status of the Ethiopian insurance sector. Specifically, the chapter delves into the details of competition among insurers in light of common competition factors such as price (premium), variety of products, innovation and use of modern technology. The compatibility of our competition law and other subordinate legislation to the peculiar needs of the insurance sector is also one concern of this chapter. Moreover, whether Ethiopian insurers are horizontally cooperating among them using competition law's permissible exceptions is the other area of discussion. The chapter is relevant to pinpoint the legal and practical loopholes in the competitive environment of the Ethiopian insurance sector that demand further improvement.

3.2 Horizontal Competition in the Ethiopian Insurance Sector: Introductory Overview

Competition among market participants is increasingly becoming the principle of a modern-day market-oriented economy.²⁷⁹ The reason is the assumption that competition merits all; it encourages businesses to compete for customers that ultimately results in a commensurate price for goods and services, increased innovation, and more choice.²⁸⁰ Competition in the insurance sector is important for several reasons. For one thing, competition brings efficiency, quality and innovation to the insurance sector that benefits customers and the company. In addition, the

²⁷⁹ See _____, *Competition Policy in the EU: Fifty Years on from the Treaty of Rome*, Xavier Vibes edn., Oxford University Press, New York, United States, 2009, p.1. [Hereinafter, *Competition Policy in the EU*].

²⁸⁰ See The Ireland Competition Authority, *Complying with Competition Law*, p.2. See also Maurice E. Stucke, *What is Competition? 'in'* Daniel Zimmer edn., *The Goals of Competition Law*, the fifth ASCOLA Workshop on Comparative Competition Law, Edward Elger Publishing Ltd., Massachusetts, USA, 2012, p.31. [Hereinafter, Maurice E Stucke, *What is competition law?*].

dearth of competition not only leads to anticompetitive behaviour but also affects the external finance available to firms.²⁸¹ Turning to the main inquiry i.e. competition among insurers in Ethiopia²⁸² the discussions will focus on the existing competition among insurers from the perspectives of common competition variables like price (premium), product variety, innovation and use of modern technology.²⁸³ The Ethiopian insurance sector is criticized for its little contribution to the GDP of the country.²⁸⁴ UNCTAD's study similarly shows that the Ethiopian insurance sector is among the lowest in Africa in terms of market share, market penetration and insurance density.²⁸⁵ The majority of Ethiopian society still mitigates various risks through informal and traditional financial services such as *e'der*, *e'qub*, money lenders (*Arata abedari*), and pawnbrokers to satisfy emergent needs of finance and alleviate risks.²⁸⁶ One author to the Addis Standard mentioned that perhaps Ethiopian insurers showed better performance during Emperor Haile Selassie's regime for local insurers were permitted to work together with foreign insurance companies.²⁸⁷ The insurance industry in Ethiopia is "very small" in all aspects.²⁸⁸ In Ethiopia today, there are eighteen (18) insurance companies in operation.²⁸⁹ With the opening of 37 new branches in 2019/20, the branch expansion of insurance companies increased to 605.²⁹⁰ More than half (54.4) per cent of their branches are situated in Addis Ababa.²⁹¹ The total capital of all insurance companies is 9.7 billion birrs out of which the share of government-owned

²⁸¹ *Id*, pp.31-32.

²⁸² The study surveys six insurers namely, Ethiopian Insurance Corporation (EIC), Awash Insurance S.C, Nile Insurance S.C, Nyala Insurance S.C, Hibret (United) Insurance S.C, and Zemen Insurance S.C to study the horizontal competitive status of Ethiopian insurers. Thus, the data used for this study is acquired from the concerned bodies of these insurance companies.

²⁸³ See Alexander Italianer, *Competition Agreements under the EU Competition Law*, p.5. See also The Ireland Competition Authority, *Complying with Competition Law*, p.2. See again, Maurice E. Stuke, *What is Competition law?* pp.31-32.

²⁸⁴ See Yared Kefyalew and Bogale Anja Abba, *Trade Competition among Insurers in Ethiopia*, pp.454-456.

²⁸⁵ See Mezgebe Mihretu, *The Ethiopian Insurance Industry and the Reinsurance Business Legal Environment*, Ethiopian Development Research Institute, A research Report Presented on 8th Annual International Microfinance Conference Organized by the Association of Ethiopian Microfinance Institutions (AEMFI) and Sidama and Omo Microfinance Institutions, Addis Ababa, Ethiopia, 2015, p.10. [Hereinafter, Mezgebe Mihretu, *The Ethiopian Insurance Industry and the Reinsurance Business*].

²⁸⁶ See Kahase G.Michael, *Ethiopian Insurance Sector and its Contribution to Economic Growth*, pp.5-6. See also Muluneh Alemu, *Butress Incomes, Assets, Reduce Vulnerability to Shocks*, *Birritu National Bank of Ethiopia Quarterly Magazine*, 2012, No.113, pp.10-32 at p.29.

²⁸⁷ See Wasihun Mekonnen, *Independent Insurance Regulator can do Wonders for Industry*, PP.1-2.

²⁸⁸ See Japan International Cooperation Agency and Japan Economic Research Institute Inc., *Data Collection Survey on Development Finance Sector in FDRE*, p.31.

²⁸⁹ See National Bank of Ethiopia, *Annual Report 2019/2020*, p.41.

²⁹⁰ *Id*, p.38-39.

²⁹¹ *Ibid*.

Ethiopian Insurance Corporation is 29.3 per cent, while the share of the remaining seventeen private insurers is 70.7 per cent of total capital.²⁹² This study canvasses the competitive status of Ethiopian insurers by selecting six insurers; the Ethiopian Insurance Corporation, Awash Insurance S.C, Nile Insurance S.C, Nyala Insurance S.C, United Insurance S.C, and Zemen Insurance S.C to evaluate the horizontal competition atmosphere of the Ethiopian insurance sector. In the subsequent part of the thesis, the horizontal competitive status of selected Ethiopian insurance companies from the vantage point of common competition variables is made.

3.3 Competition in the Setting of Premium (Price)

In the insurance sector, a premium is a price the insured pays to the insurer to obtain recovery from certain misfortune. According to the current Ethiopian insurance business proclamation, the premium is “*the amount of money an insurer charges to provide the coverage described in an insurance policy.*”²⁹³ Premium in the insurance industry is, thus, the price the insurer obtained from the insured in exchange for indemnity to future uncertain losses. In the context of insurance, insurance policy is the price of the product and premium is the price.²⁹⁴ Insurers compete in the market through price, quality, product variety, and innovation.²⁹⁵ In the insurance industry, a premium is determined based on market demand taking the loss the insurer will probably pay, the administrative expenses and the profits of the insurer into account.²⁹⁶ Price (premium) is the most complex and sensitive undertaking determined based on the computations of actuarial experts taking factors such as past data, the competitor companies action, and the growth strategy of the insurer and customer contentment into consideration.²⁹⁷ The insurers’ competition in the Ethiopian insurance sector in the determination of premium is unhealthy.²⁹⁸

²⁹² *Ibid.*

²⁹³ See The Insurance Business Proclamation, Article 2(45).

²⁹⁴ See R.H. Jerry II, The Antitrust Implications of Collaborative Standard Setting, p.407.

²⁹⁵ See Orhan M. Çeku and Mentor Q. Shaqiri, Anti-competitive Agreements according to Kosovo’s Law on the Protection of Competition, p. 194.

²⁹⁶ See Robert W. Klein (PhD.), *A Regulator’s Introduction to the Insurance Industry*, p.19.

²⁹⁷ See Edward W. Frees, and *et al* (edns.), *Predictive Modeling Applications in Actuarial Science*, International Series on Actuarial Science, Volume II: Case Studies in Insurance, Cambridge University press, New York, USA, 2016, p.1. [Hereinafter, Edward W. Frees and *et al* (edns.), *Predictive Modeling Applications in Actuarial Science*].

²⁹⁸ Interview with Mr. Sewasew Paulos, Marketing and Customer Relationship Management Division Head, Nile Insurance S.C, on *the Competitive Status of the Company*, April 12, 2021. Interview with Mr. Samuel Workneh, Awash Insurance S.C, Finfinie Division vice Executive Officer, on *the Competition of Insurers through Premium*, April 11, 2021. Interview with Ms. Habtam Abate, Strategy and Change Management Customer Service Officer of Nyala Insurance S.C., on *the Competition of Insurers with Premium Rate*, April 13, 2021. Interview with Mr. Yared

Each insurer cuts premiums wittingly down so that it could lure customers towards the company.²⁹⁹ Experts stated that currently Ethiopian insurers and their leaders are unprofessionally cutting premiums to attract customers which disregards the very purpose insurance is created for; peace of mind and protection of customers.³⁰⁰ The prudent question worthy of further scrutiny is what distinguishes price competition from price war? As it was mentioned repeatedly in this research one of the factors through which companies compete in the market is price. Thus, competition based on price is expected in every competitive market including the insurance sector. So, what additional factors are required to characterize a certain pricing move as a price war? In answering this question, Andreas Krämer and *et al* found that in the case of a price war (1) the focus is on competitors but not consumers, (2) the path of pricing is downward, (3) competitors toil to gain market share through aggressive pricing accepting short term losses, (4) prices are undercut below the level of industry profitability, and every action is determined by suppliers than consumers.³⁰¹

In the same vein, competing companies in Ethiopia (those surveyed in this study and others alike) are cutting premiums wittingly down to attract customers.³⁰² Experts in the insurance sector are of the view that price-cutting competition poses a significant challenge to the growth of the sector.³⁰³ Charging premium that is not commensurate to the actual risk exposure is becoming a common practice in the industry. Each insurance company tries to cut premiums

Molla, CEO of Nyala Insurance S.C, on *the Rate Cutting Competition in the Sector*, April 13, 2021. Interview with Mr. Yosef Wubshet, Principal Officer of Human Resource Development, Ethiopian Insurance Corporation, on *the Competition among Insurers in the Insurance Sector*, April 11, 2021. Interview with Mr. Matias Firdie, Claims Supervisor of United Insurance S.C, on *the Premium Competition in the Company*, April 13, 2021. Interview with Mr. Bekalu Tilahun, Awash Insurance S.C Legal and Advisory Services Directorate Director, on *the Price competition of Ethiopian Insurers*, April 11, 2021. [Hereinafter, Interview with Mr. Sewasew Paulos, Mr. Samuel Workneh, Ms. Habtam Abate, Mr. Yared Molla, Mr. Matias Firdie, Mr. Yosef Wubshet, Mr. Shumetie Zerihun and Mr. Bekalu Tilahun]. The idea of these experts is obtained in the date and month stated here. Thus, for the subsequent citations only the name of the experts will be stated.

²⁹⁹ *Ibid.*

³⁰⁰ Telephone Interview with Mr. Tibebe Tilahun, Insurance Trainer and Consultant, on *the Premium Competition among Insurers in Ethiopia*, May 28, 2021. [Hereinafter, Telephone Interview with Mr. Tibebe Tilahun].

³⁰¹ See Andreas Krämer, Martin Jung & Thomas Burgartz, A Small Step from Price Competition to Price War: Understanding Causes, Effects and Possible Countermeasures, *International Business Research*, 2016, Vol.9, No.3, pp. 1-14, at p. 3. Available at <<http://dx.doi.org/10.5539/ibr.v9n3pl>>. Accessed on May 22, 2021. [Hereinafter, Andreas Krämer and *et al*, A Small Step from Price Competition to Price War]. The first two characterizations i.e. focusing on competitor than customers and downward direction of pricing is common in an oligopolistic market structure wherein competitors' pricing decision is highly influenced by the action of rivals. *Ibid.*

³⁰² Interview with Mr. Sewasew Paulos, Mr. Samuel Workneh, Ms. Habtam Abate, Mr. Yared Molla, Mr. Matias Firdie, Mr. Yosef Wubshet, Mr. Shumetie Zerihun, and Mr. Bekalu Tilahun, on *the Competition of Ethiopian Insurers in Premium*, *supra note*, 317.

³⁰³ *Ibid.*

(especially in general insurance) deviating from scientific actuarial results at the expense of its profit to attract and retain customers to the company.³⁰⁴ Insurance companies reported that premium cutting or price war is threatening the solvency of insurers to the attention of the regulator, the National Bank of Ethiopia.³⁰⁵ The problem in the sector is further aggravated by the fact that most private insurance companies are notorious for procrastinating their clients (insured) at the time of claims settlement i.e. they first attract customers through offering low premium utilizing customers price sensitivity but eventually when a risk materializes their claims settlement is rigorous and are too litigious to avoid or at least delay payment.³⁰⁶ Price war adversely affects the interest of consumers because though they may first be attracted by low premiums in the long run the quality of service, variety of products and even the solvency of the insurer may be endangered that ultimately affects customers and the economy too.³⁰⁷ The competitor companies are also harmed as a result of foregone revenue (profit), and erosion of customer loyalty that are outcomes of a race to the bottom competition.³⁰⁸ Price-cutting as a competitive strategy is undesirable.³⁰⁹ It makes customers price sensitive at the expense of other values like quality and in the insurance sector, their peace of mind would be eroded.³¹⁰ The causes of price war among competitors in the Ethiopian insurance industry are the following.

³⁰⁴ *Ibid.* According to the experts most of the customers of existing insurance companies are price sensitive that shift towards the company offering minimum premium. However, when a risk materializes such companies have a habit of rigorous claims settlement. Specially, Mr. Yosef stressed that even after the claim is determined (either in courts or by experts of the company) they do not pay once to their customers rather payment is usually made through installments of two or more times depending on the amount of claim.

³⁰⁵ *Ibid.* One can also see the annual reports of United Insurance S.C and Birhan Insurance S.C wherein both insurers expressed their grievances' to the National Bank of Ethiopia. See also The 2017 Annual Reports of Nib Insurance S.C, p.11.

³⁰⁶ Interview with Mr.Yosef Wubshet, Principal Officer of Human Resource Development, Ethiopian Insurance Corporation, on *the Competition among Insurers in the Insurance Sector*, April 11, 2021. The same idea is raised in the researcher's Telephone Interview with Mr. Tibebe Tilahun, Insurance Trainer and Consultant, on *the Premium Competition among Insurers in Ethiopia*, 28 May, 2021.

³⁰⁷ See Oliver P. Heil and Kristiaan Helsen, Towards an Understanding of Price Wars: Their Nature and How they Erupt, *International Journal of Research in Marketing*, 2001, Vol.18, No. __, pp.83-98, at p. 83. [Hereinafter, Oliver P. Heil and Kristiaan Helsen, Towards an Understanding of Price Wars].

³⁰⁸ *Ibid.*

³⁰⁹ See Abraham Gebreamlak (Chairperson of Board of Directors of Lion Insurance S.C), Lion Insurance Company Overview Report, p.2. Available at <<https://www.anbessainurance.com/>> [Last accessed on June 12, 2021].

³¹⁰ See Robert A. Garda and Michael V. Marn, Price wars: No Non-Sense Advice on How to Avoid the Death Spiral of Permanently Lost Profit, Declining Value and Heightened Price Sensitivity, *The McKinsey Quarterly*, No. 3, Gale Academic One File, 1993, p.2. Available at <<https://go.gale.com/ps/anonymous?id=GALE%7CA14648452&sid=googleScholar&v=2.1&it=r&linkaccess=abs&isn=00475394&p=AONE&sw=w>> [Last accessed on 28 May, 2021]. [Hereinafter, Robert A. Garda and Michael V. Marn, Price Wars].

First, Ethiopian insurers are providing homogeneous products to their customers.³¹¹ As a result of this fact, they employ price-cutting as a customer attraction and retaining strategy. Second, other experts are of the view that added to the homogeneity of insurance products lack of innovation, dearth of experts in the area, and managerial problem are other reasons that caused premium cutting as a competition strategy among insurers.³¹² The problem for competition authorities is price war is not condemned unless sufficient evidence that shows that the problem reaches the point of predatory pricing is adduced. The Ethiopian Competition and Consumers Protection Authority can, however, make a sector-specific inquiry and identify signals of anti-competitive behaviour of competitors that if pursued may lead to anti-competitive results such as predatory pricing, and collusion.³¹³ Nonetheless, tools relevant for sector-specific inquiry are not legally recognized and are yet to be practised in our competition legal regime.³¹⁴ Even if it were recognized, sector-specific inquiry (screening) is costly to administer and thus not feasible taking the current financial status, and human resource constraint of the authority into account.³¹⁵ Accordingly, the regulatory authority of the insurance sector, the National Bank of Ethiopia, is the last resort where one may find a prevention or a cure to the problem, price war. The National Bank can set a minimum premium below which insurers are not permitted to charge their

³¹¹ Telephone interview with Mr. Tibebe Tilahun, Insurance Trainer and Consultant, on *the Causes of Price War in the Ethiopian insurance sector*, June 11, 2021. Interview with Mr. Sewasew Paulos, Marketing and Customer Relationship Management Division Head, Nile Insurance S.C, on *the Causes of Price War in the Ethiopian insurance sector*, April 12, 2021. Interview with Mr. Samuel Workneh, Awash Insurance S.C, Finfinie Division vice Executive Officer, on *the Causes of Price War in the Insurance Sector*, April 11, 2021. Interview with Ms. Habtam Abate, Strategy and Change Management Customer Service Officer of Nyala Insurance S.C., on *the Causes of Price War in the Insurance Sector*, April 13, 2021. Interview with Mr. Yared Molla, CEO of Nyala Insurance S.C, on *the Causes of Rate Cutting Competition in the Sector*, April 13, 2021. Interview with Mr. Yosef Wubshet, Principal Officer of Human Resource Development, Ethiopian Insurance Corporation, on *the Rate Cutting Competition among Insurers in the Insurance Sector*, April 11, 2021. Interview with Mr. Matias Firdie, Claims Supervisor of United Insurance S.C, on *the Causes of Price War in the Sector*, April 13, 2021. Interview with Mr. Bekalu Tilahun, Awash Insurance S.C Legal and Advisory Services Directorate Director, on *the Causes of Price War among Ethiopian Insurers*, April 11, 2021.

³¹² *Ibid.*

³¹³ Proactive methods of cartel and other anticompetitive practices are neither recognized in the TCCPP of Ethiopia nor other working guidelines of the Competition and Consumer Protection Authority. The TCCPP of Ethiopia recognizes only one reactive method of Cartel detection i.e. Amnesty program that exonerates the person from penalty provided that the person gives adequate information on the role of participants and other evidence that may not otherwise be obtained. See the TCCPP, Article 42(6). Interview with Mr. Getnet Aschenafi, the Ethiopian Competition and Consumer Protection Authority Complaint Investigation and Case Institution Directorate Director, on *the Anti-Competitive Practice Detection Tools in the Ethiopian Competition Legal regime*, April 13, 2021.

³¹⁴ Interview with Mr. Getnet Aschenafi, the Ethiopian Competition and Consumer Protection Authority Complaint Investigation and Case Institution Directorate Director, on *the Anti-Competitive Practice Detection Tools in the Ethiopian Competition Legal regime*, April 13, 2021.

³¹⁵ *Ibid.*

clients.³¹⁶ By virtue of Article 2(58) of the Insurance Business (Amendment) Proclamation, the bank is authorized to “*determine an economic (minimum) premium rate to be specified by a directive.*”³¹⁷ However, despite the persistence of price war and the request of some insurers, the bank does not come up with a specified law that sets a floor premium to save insurers from aggressive price-cutting competition.³¹⁸

3.4 Insurers Competition through Product Variety

The other factor through which companies compete in the market is via offering a variety of products to their customers. One of the goals of competition law is to offer consumers a choice. It is known that competition forced competitors to offer diversified products (services) that satisfy the needs and preferences of the insured.³¹⁹ The study scrutinizes the type of insurance service offered by six insurance companies in Ethiopia. The result of the study indicated that almost all of them provide identical insurance services.³²⁰ All of the six insurers selected for this study saving Zemen Insurance S.C provide both general and life insurance services.³²¹ However, almost all of the services offered by all insurers are identical.³²² To be more specific, the common general insurance services offered include all risk aviation (cargo and hull), Bankers blanket policy, burglary and housekeeping, bonds, consequential loss, engineering, fidelity guarantee, fire and lighting, goods in transit, inland carriers liability, workmen’s compensation, marine (cargo and hull), money, motor, personal (group personal) accident, plate glass, product liability, professional indemnity, and public liability.³²³ The long term insurance service offered by insurers includes life insurance services such as individual & life, endowment assurance,

³¹⁶ See The Proclamation to Amend Insurance Business Proclamation, *Federal Negarit Gazeta*, Proclamation No.1163/2019, 26th year, No.6, Article 2(58). [Hereinafter, the Insurance Business Amendment Proclamation].

³¹⁷ *Ibid.*

³¹⁸ Telephone Interview with Ms. Kibre Moges, Legal Services Directorate Director of National Bank of Ethiopia, on *the Premium Competition of Insurers*, 25 June 2021.

³¹⁹ Robert W. Klein (PhD.), *A Regulator’s Introduction to the Insurance Industry*, p.18.

³²⁰ See <<https://nyalainsurancesc.com/?q=content/agricultural-micro-insurance>>or <<https://nyalainsurancesc.com/?q=our-services>> Accessed on May 30, 2021. See also Products and services of Ethiopian Insurance Corporation. Available at <<https://eic-et.com/index.php/product-service/>> [Last accessed on May 30, 2021].

³²¹ The type of services offered by insurers is obtained from the brochure of insurers. It can also be easily accessed in the web site of each insurer.

³²² Interview with Mr. Sewasew Paulos, Mr. Samuel Workneh, Ms. Habtam Abate, Mr. Yared Molla, Mr. Matias Firdie, Mr. Yosef Wubshet, Mr. Shumetie Zerihun, and Mr. Bekalu Tilahun, on *the Service Variety in the Insurance Sector*, *supra note* 311.

³²³ One can look at the website of each insurer to identify the type of services each insurer offer to their clients.

whole life insurance, riders, medical expense insurance, and travellers' health insurance.³²⁴ Travellers' health insurance service was inaugurated by insurers following the Schengen States³²⁵ requirement that any person who travelled to these states should have emergency travellers' health insurance as a condition to acquire a visa. Accordingly, the National Bank of Ethiopia enacted a directive that allows insurers to introduce travellers' health insurance.³²⁶ The insurance sector despite its more than a century of existence does not offer to the market (or customers') a new insurance product that takes into account the needs of society.³²⁷ Most insurers are providing traditional insurance products (services) that were offered a long time ago during the imperial times.³²⁸ The type and variety of insurance services offered by insurers is also an indicator of the competitive status of insurers.³²⁹ In most cases, general insurance varieties are mandated by law or contractual undertakings in the business life of individuals and companies.³³⁰ Conversely, long-term insurance products are voluntarily purchased by individuals

³²⁴ Interview with Shumetie Zerihun, CEO of Zemen insurance S.C, on *the Product Variety in the Insurance Sector*, April 14, 2021. Interview with Mr. Yosef Wubshet, Principal Officer of HRD at EIC, on *the Product Variety in the insurance sector*, April 11, 2021. Telephone interview with Mr. Tibebe Tilahun, Insurance Trainer and Consultant, on *the Product Variety in the Ethiopian Insurance Sector*, June 11, 2021. See also Interview with Mr. Sewasew Paulos, Marketing and CRM Division Head, Nile Insurance S.C, on *the Service Variety in the Insurance Sector*, April 12, 2021. Interview with Mr. Samuel Workneh, Awash Insurance S.C, Finfinie Division vice Executive Officer, on *the Product Diversity in the Insurance Sector*, April 11, 2021. Interview with Ms. Habtam Abate, Strategy and Change Management Customer Service Officer of Nyala Insurance S.C., on *the Product Variety in the Insurance Sector*, April 13, 2021. Interview with Mr. Yared Molla, CEO of Nyala Insurance S.C, on *the Service Variety in the Insurance Sector*, April 13, 2021. Interview with Mr. Yosef Wubshet, Principal Officer of Human Resource Development, Ethiopian Insurance Corporation, on *the Service Variety Competition among Insurers in the Insurance Sector*, April 11, 2021. Interview with Mr. Matias Firdie, Claims Supervisor of United Insurance S.C, on *the Competition of Insurers in Product Variety*, April 13, 2021. Interview with Mr. Bekalu Tilahun, Awash Insurance S.C Legal and Advisory Services Directorate Director, on *the Competition of Insurers in Service Variety*, April 11, 2021.

³²⁵ Schengen States include; Australia, Belgium, France, Germany, Greece, Italy, Island, Denmark, Finland, Sweden, Luxemburg, Netherland, Portugal, Spain, and other states of Europe whose membership to the Schengen States in the future will be identified by insurers.

³²⁶ See Licensing and Supervision of Insurance Business Emergency Travellers' Health Insurance, Directive No. SIB/28/2004.

³²⁷ Telephone Interview with Mr. Tibebe Tilahun, on *the Variety of Insurance Products in the Insurance Sector*, 20 May, 2021.

³²⁸ Interview with Mr. Yosef Wubshet, EIC Principal Officer of Human Resource Development, on *the Types of Insurance Services Offered by their Corporation*, 11 May, 2021. The same idea was obtained from the interview with Ms. Habtam Abate, Strategy and Change Management Customer Service officer of Nyala Insurance S.C, on *the Diversity of Services in the Company*, April 13, 2021.

³²⁹ Interview with Mr. Tibebe Tilahun, on *the Variety of Insurance Products in the Insurance Sector*, 20 May 2021.

³³⁰ General insurance varieties such as risk aviation (cargo and hull), Bankers blanket policy, burglary and housekeeping, bonds, consequential loss, engineering, fidelity guarantee, fire and lighting, goods in transit, inland carriers liability are required by law or contract to have insurance. Interview with Mr. Tibebe Tilahun, Insurance Trainer and Consultant, on *the Variety of Insurance Products in the Insurance Sector*, 20 May, 2021.

that in turn demand the customer attraction (competition) effort of insurers.³³¹ More than ninety per cent (90%) of Ethiopian insurers' premium is acquired from general insurance services, whereas long-term insurance products are at the lowest stage of development. This partly shows that Ethiopian insurance companies are not competitive enough to convince, educate and attract clients to sell long term insurance varieties.³³² The only new insurance services some insurers offer include crop insurance, livestock insurance, condominium insurance, and floriculture insurance.³³³ Crop insurance and livestock insurance services, as it stands now, are only provided for investors that engage in mechanized farming and pastoralist investors respectively that purchase an insurance policy.³³⁴ Thus, the service is not accessible to the wider majority of small farmers in the country.³³⁵ Ethiopian insurers tend to serve people living in towns and cities and their service variety is not yet capable of serving those who live in the countryside.³³⁶ Further, insurers tend to serve corporate clients and are affiliated with banks to obtain clients.³³⁷ Experts in the insurance sector stressed that the homogeneity of insurance services contributed a lot to

³³¹ Interview with Mr. Sewasew Paulos, Mr. Samuel Workneh, Ms. Habtam Abate, Mr. Yared Molla, Mr. Matias Firdie, Mr. Yosef Wubshet, Mr. Shumetie Zerihun, and Mr. Bekalu Tilahun, on *the Service Variety in the Insurance Sector*, *supra note* 324.

³³² *Ibid.* According to the experts in the case of general insurance products it is customers that come to the door of insurers. Meanwhile, long term insurance products require insurers to knock the door of clients to educate convince and attract customers to sale. This in other words means lone term services demand competition effort than general insurance products. *Ibid.*

³³³ These insurance services are offered by the Ethiopian Insurance Corporation and Nyala Insurance S.C. Specifically, Nyala Insurance S.C provides Agricultural micro insurance which comprises multi-peril crop insurance, coffee plantation insurance and indemnity livestock insurance. Turning to the distinguished services offered by Ethiopian Insurance Corporation, condominium insurance, floriculture insurance, and crop insurance. See <<https://nyalainsurancesc.com/?q=content/agricultural-micro-insurance>>or <<https://nyalainsurancesc.com/?q=our-services>> [Last accessed on May 30, 2021]. See also product and services of Ethiopian Insurance Corporation, Available at <<https://eic-et.com/index.php/product-service/>> [Last accessed on May 30, 2021].

³³⁴ Interview with Mr. Yosef Wubshet, EIC Principal Officer of Human Resource Development, on *the Types of Insurance Services Offered by the Corporation*, May11, 2021. See also Kehulum Yibeltal, *Climate Insurance under the 2015 Paris Agreement: The Case of Ethiopian Insurance Corporation*, L.L.M thesis, Masters of Public International Law, Addis Ababa University School of Law and Governance Studies, 2018, [Unpublished], p.37. Available at <<http://etd.aau.edu.et/bitstream/handle/123456789/12679/Kehulum%20Yibeltal.pdf?sequence=1&isAllowed=y>> Accessed on 10 June, 2021. [Hereinafter, Kehulum Yibeltal, *Climate Insurance under the 2015 Paris Agreement*].

³³⁵ Interview with Mr. Yosef Wubshet, EIC Principal Officer of Human Resource Development, on *the Types of Insurance Services Offered by their Corporation*, May11, 2021. The same idea was obtained from interview with Ms. Habtam Abate, Strategy and Change Management Customer Service Officer, Nyala Insurance S.C, on *the Competition of Insurers in Product Variety*, April13, 2021. See also Kehulum Yibeltal, *Climate Insurance under the 2015 Paris Agreement*, p.37.

³³⁶ Interview with Mr. Sewasew Paulos, Mr. Samuel Workneh, Ms. Habtam Abate, Mr. Yared Molla, Mr. Matias Firdie, Mr. Yosef Wubshet, Mr. Shumetie Zerihun, and Mr. Bekalu Tilahun, on *the Service Variety in the Insurance Sector*, *supra note* 324.

³³⁷ See Japan International Cooperation Agency and Japan Economic Research Institute Inc., *Data Collection Survey on Development Finance Sector in FDRE*, p.31.

the existing price-cutting competition.³³⁸ Put it differently, companies would not rush to attract customers by scarifying their actuarially legitimate price had their insurance products were somehow diversified. Therefore, Ethiopian insurers are not competitive enough in introducing new insurance varieties that are vital to absorb usual risks like climate (whether) insurance, agricultural micro-insurance, flood insurance, drought insurance, insurance for pests like locust, livestock insurance etc.³³⁹

3.5 Competition of Insurers in Innovation, and Use of Modern Technology

Innovation and the utilization of modern technologies that ease the doing of business of the company is one area where companies compete with their rivals. In its common sense understanding, competition indicates a rivalry among firms to offer lower prices, better quality, and differentiated products to consumers.³⁴⁰ Innovation and the use of technology is always an integral part of a competition.³⁴¹ Accordingly, competitors compete in the market in product innovation (new products) and the use of new technologies that ease the undertakings of a firm. Competition law experts agree in unison on the need to grant “a certain amount of protection from competition “...” for a firm to undergo the risks and costs of innovation.”³⁴² In the same vein, the TCCPP of Ethiopia under Article 7(1) (a) allows competitors in a horizontal relationship to agree among them if “*technological, efficiency or other pro-competitive gain resulting from their agreement outweighs that effect.*”³⁴³ This shows the fact that our competition law adopted a rule of reason standard of review to assess the procompetitive and anticompetitive effects of horizontal collaboration among market competitors. Meanwhile, insurers in Ethiopia are weak in their use of technology and innovation.³⁴⁴ A multitude of tasks of insurance

³³⁸ *Ibid.*

³³⁹ *Ibid.*

³⁴⁰ See Kelber Wolfgang, *Competition, Innovation and Competition Law*, p.5.

³⁴¹ *Ibid.*

³⁴² See J. Thomas Rosch, Promoting Innovation: Just How “Dynamic” Should Antitrust Law Be? pp.2-3. Our competition law (TCCPP) under Article 7(1) (a) tolerates agreements or concerted practices by business persons if the party can prove that “any technological, efficiency or other procompetitive gain resulting from it outweighs” the anti-competitive effect thereof.

³⁴³ See TCCPP, Article 7(1) (a).

³⁴⁴ Interview with Shumetie Zerihun, CEO of Zemen insurance S.C, on *the Use of Modern Technology and Innovation in the Insurance Sector*, April 14, 2021. Interview with Mr. Yosef Wubshet, Principal Officer of HRD at EIC, on *the Product Variety in the insurance sector*, April 11, 2021. See also Interview with Mr. Sewasew Paulos, Marketing and CRM Division Head, Nile Insurance S.C, on *the Use of Modern Technology and Innovation in the*

companies is nowadays done using modern digital technologies such as online claims notification and settlement, online insurance application, digital customer advising and follow-up, e-insurance service or digital insurance services and other related technologies like BIMA elaborated in the second chapter of the thesis.³⁴⁵ Meanwhile, insurers in Ethiopia are not utilizing these technologies in their sales system, customer relationship and actuarial computations.³⁴⁶ The only exceptions among insurers are Awash Insurance S.C and Lion Insurance S.C³⁴⁷ that introduce online claims notification forms in the insurance sector.³⁴⁸ In addition, United Insurance S.C launched online insurance sales though only in limited types of insurance products.³⁴⁹ Moreover, Nyala Insurance S.C also connected its branches through Blockchain technology.³⁵⁰ Of course, the recent insurance business (amendment) proclamation under Article 2(56) promises to come up with a directive that sets out minimum conditions to provide digital

Insurance Sector, April 12, 2021. . Interview with Mr. Samuel Workneh, Awash Insurance S.C, Finfinie Division vice Executive Officer, on *the Use of Modern Technology and Innovation in the Insurance Sector*, April 11, 2021. Interview with Ms. Habtam Abate, Strategy and Change Management Customer Service Officer of Nyala Insurance S.C., on *the Use of Modern Technology and Innovation in the Insurance Sector*, April 13, 2021. Interview with Mr. Yared Molla, CEO of Nyala Insurance S.C, on *the Use of Modern Technology and Innovation in the Insurance Sector*, April 13, 2021. Interview with Mr. Yosef Wubshet, Principal Officer of Human Resource Development, Ethiopian Insurance Corporation, on *the Use of Modern Technology and Innovation in the Insurance Sector*, April 11, 2021. Interview with Mr. Matias Firdie, Claims Supervisor of United Insurance S.C, on *the Use of Modern Technology and Innovation in the Insurance Sector*, April 13, 2021. Interview with Mr. Bekalu Tilahun, Awash Insurance S.C Legal and Advisory Services Directorate Director, on *the Use of Modern Technology and Innovation in the Insurance Sector*, April 11, 2021. Telephone interview with Mr. Tibebe Tilahun, Insurance Trainer and Consultant, on *the Use of Technology and Innovation in the Ethiopian Insurance Sector*, 20 April, 2021.

³⁴⁵ Telephone interview with Mr. Tibebe Tilahun, *supra note*, 344.

³⁴⁶ Interview with Mr. Sewasew Paulos, Mr. Samuel Workneh, Ms. Habtam Abate, Mr. Yared Molla, Mr. Matias Firdie, Mr. Yosef Wubshet, Mr. Shumetie Zerihun, and Mr. Bekalu Tilahun, on *the Use of Modern Technology and Innovation in the Insurance Sector*, *supra note* 344.

³⁴⁷ See the online claims notification form of Lion Insurance S.C. in the following link <https://www.anbessainsurance.com/login.php> [Last accessed on June 05, 2021].

³⁴⁸ See the details of the United Insurance S.C. notification form in the link <https://www.awashinsurance.com/about/mail1>.> [Last accessed on June 5, 2021].

³⁴⁹ The Company offer online insurance after creating the online sales platform. The Indian based technology company called Assuer Tech. Interview with Mr. Matias Firdie, Claims Supervisor of United Insurance S.C, on *the Use of Modern Technology in the Company*, 13 April, 2021. See also _____, United Insurance Company Launches Online Insurance Sales, *Addis Fortune*, Vol.17, No.874, (January 17, 2017), p.1. Available at <https://addisfortune.net/articles/united-insurance-launches-online-insurance-sales/> [Last accessed on 22May, 2021].

³⁵⁰ Despite the companies effort to introduce Block chain technology that connects all branches in a single ledger thereby avoiding the dangers of data hacking and manipulation, other main tasks such as insurance sales, claims notification and settlement and distribution are not yet digitalized through modern technology. That is to mean that the technology is constrained to the internal financial operations of the company. Interview with Ms. Habtam Ababte, Strategy and Change Management Customer Service Officer of Nyala Insurance S.C, on *the Use of Modern Technology and Innovation in the Insurance Sector*, April 13, 2021.

insurance business³⁵¹ but the National Bank of Ethiopia does not enact any directive yet.³⁵² The reasons for such lower innovation and use of technology are the non-exposure of the sector for foreign competition, the absence of actuarial (data) science³⁵³ in the educational system of the country and the resultant dearth of experts³⁵⁴, lack of strategic alliance among insurers, and the problem of leadership.³⁵⁵ This indicates that the horizontal competition among insurers in Ethiopia in the use of technology is at its infant stage of development and it can, thus, be said that insurers are not strong enough in this sort of competition.

3.6 Competition and Cooperation under Ethiopian Competition and Consumer Protection Law

Ethiopia changed its competition and consumer protection law thrice in a short period.³⁵⁶ Interestingly, one of the new developments in the latter two competition proclamations' was the recognition of the rule of reason and rule per se standards of review though both are not mentioned by name.³⁵⁷ To be exact, Article 7(1) (a) of the TCCPP reads the following:

³⁵¹ See Insurance Business (Amendment) Proclamation, *Federal Negarit Gazeta*, Proclamation No.1163/2019, 26th year No.6, Article 2(56).

³⁵² Telephone Interview with Ms. Kibre Moges, Legal Services Directorate Director of National Bank of Ethiopia, on *the Applicability of Digital Insurance in Ethiopia*, 26 June, 2021.

³⁵³ To the best of the researcher's knowledge only Arba Minch University offers actuarial science in its undergraduate study program. Some private academies and schools offer training courses on data science though it is not sufficient to produce qualified experts on the area. Interview with Mr. Sewasew Paulos, Marketing and CRM division head, Nile insurance S.C, on *the Use of Technology and Innovation in Nile insurance S.C*, April 12, 2021. See also Telephone interview with Mr. Tibebe Tilahun, Insurance trainer and consultant, on *the Use of Modern Technology in the Ethiopian Insurance Sector*, June 11, 2021.

³⁵⁴ Even the Ethiopian Insurance Corporation which is the dominant insurer in the market depends on experts of neighboring countries like Kenya to provide training to its staffs that incontestably indicates the dearth of experts in the insurance sector which is an input for innovation and related competitions in the sector. Interview with Mr. Yosef Wubshet, HRD Principal Officer of EIC, on *the Competition of Insurers in Innovation and Consumption of Modern Technology*, 11April, 2021.

³⁵⁵ Interview with Mr. Sewasew Paulos, Mr. Samuel Workneh, Ms. Habtam Abate, Mr. Yared Molla, Mr. Matias Firdie, Mr. Yosef Wubshet, Mr. Shumetie Zerihun, and Mr. Bekalu Tilahun, on *the Causes the Use of Obsolete Technology and Innovation in the Ethiopian Insurance Sector*, *supra* note 344.

³⁵⁶ The first is the Trade Practice Proclamation, 2003, *Federal Negarit Gazeta*, Proclamation No.329, 9th year No.49. The second is Trade Practice and Consumer's Protection Proclamation, 2010, *Federal Negarit Gazeta*, Proclamation No.685, 16th year No.19. And the third and the current governing competition and consumer protection law of Ethiopia is - the Trade Competition and Consumers Protection Proclamation, 2013, *Federal Negarit Gazeta*, Proclamation No.813, 20th year No.28.

³⁵⁷ Specifically, under Article 5(3) of the proclamation, rule - of -reason approach is adopted to assess abuse of dominance. The same holds true for anticompetitive agreements stated under Article 7 of the proclamation. Horizontal agreements such as price fixing, bid rigging (collusive tendering), and market sharing are per se (absolutely) prohibited as per article 7(1) (b) of TCCPP. Meanwhile, Article 7(1) (a) stipulated that "the prohibition of horizontal

Article 7. Anti-competitive Agreements, Concerted Practices and Decisions

*(1) An agreement between, or concerted practice by, business persons or a decision by an association of business persons in a horizontal relationship shall be prohibited if: (a) it has the effect of preventing or significantly lessening competition **unless a party to the agreement, concerted practise or decision can prove that any technological, efficiency or other pro-competitive gain resulting from it outweighs the effect.** [Emphasis added].*

Accordingly, a rule of reason standard of review that takes into account (weighs) the pro-competitive and anti-competitive dimensions of an act to outlaw or permit certain business conduct³⁵⁸ is vividly recognized in our competition law. The recognition of the rule of reason standard of review in our competition law is inferred from the wordings of the above-stated provision that goes to say “...*unless a party to the agreement, concerted practise or decision can prove that any technological, efficiency or other pro-competitive gain resulting from it outweighs the effect.*” Put it differently, competitors in a horizontal trade chain relationship can collaborate or cooperate between (among) them provided that they adduce satisfactory evidence to the competition authority that the “technological, efficiency or other pro-competitive gains” obtained from their agreement (coordination) outweighs the anti-competitive effect. This is the tenet of the rule of reason standard of analysis. Moreover, the TCCPP of Ethiopia under Article 4 sub-Article (1) and (2) declared that while the competition and consumer protection proclamation is in principle applicable to “*any commercial activity or transaction conducted or having effect within the Federal Democratic Republic of Ethiopia*”, exceptionally the Council of Ministers is authorized to “*specify by regulation those trade activities it deems vital in facilitating economic development to be exempted from the provisions of Part Two of the proclamation*” that in turn deals with prohibition of anti-competitive trade practices and regulation of merger.³⁵⁹ This indicates that block exemption is recognized in our competition law.

The other perplexing point is while the same proclamation under Article 3 sub-article (3) declared *acceleration of economic development* as one objective of the competition law; it at the

agreements is considered using the rule of reason approach, by providing that the agreement should be prohibited if it has the effect of preventing and significantly lessening competition.” In accordance with article 7(2) vertical agreements are evaluated with rule of reason approach, “unless they involve resale price maintenance, which is per se prohibited.” See the TCCPP, Article 5(3) and Article 7(1) (a) and (b).

³⁵⁸ See Maurice E. Stuke, Does the Rule of Reason Violate Rule of Law? P.1379. See also Phillip Areeda, *The Rule of Reason in Antitrust Analysis*, pp.10-18.

³⁵⁹ See TCCPP, Article 4(1) & (2).

same time empowers the Council of Ministers to exempt those “*economic activities vital for economic development*” from the ambit of competition law under Article 4 sub-article (2). This is not only contradictory but might also create an impression that competition law is not vital for economic development.³⁶⁰ Furthermore, all economic activities are vital for economic development. Thus, the exemption as an exception to competition should be justified by other reasons that may vary in different sectors of the economy. The experience of various jurisdictions indicated that the insurance sector is one of the areas where the exception applies.³⁶¹ But, in Ethiopia, the Council of Ministers does not enact any regulation yet. Be this as it may, horizontal cooperation is allowed in the insurance sector as per the above-clarified provisions. Moreover, other relevant conditions that balance the interest of the insurer and customers such as efficiency gain, indispensability, pass-on to consumers and the absence of elimination of competition³⁶² can be subsumed using the catch-all phrase “other-procompetitive gains” stated under article 7(1)(a) of the TCCPP. However, those attached conditions for horizontal coordination are not cumulative requirements in our competition law. The implication is that the fulfilment of either of the conditions may be sufficient to grant an exemption. For instance, a collaboration that enhances efficiency would not be precluded if it is found to eliminate

³⁶⁰ See EC Draft Guideline on the Applicability of Article 101 of TFEU, p.5.

³⁶¹ *Ibid.* In addition, for almost two decades the insurance sector in European Union enjoy block exemption regulation that enables insurers of Europe to collaborate on various tasks such as information exchange, standardized terms and conditions, coinsurance and reinsurance etc. See also Eithene McCarthy and Laura Stefanescu, *The New Block Exemption Regulation for the Insurance Sector*, pp.1-4. In other jurisdictions exemption applies (1) for certain industries that are natural monopolies wherein regulation is preferable than competition, (2) the value obtained from exemption exceeds the gain from antitrust law and (3) sometimes anticompetitive activity might be beneficial. Accordingly, some jurisdictions exempt the agricultural sector (e.g. Israel’s competition law), intellectual property rights, Small and Medium Enterprises (SMEs), acts of cooperatives (in Japan), professional bodies such as lawyers, doctors, accountants (in Canadian and USA Competition law), collective bargaining among business person if no price-fixing effect is observed, underwriting of insurance and securities, and amateur sport from Leagues and teams (USA and Canada law). However, through the passage of time specific legal limits and conditions are set under competition law to avoid anticompetitive tendency. See John Roberti, Kelse Moen, and Jana Steenholdt, *The Role and Relevance of Exemptions and Exceptions in U.S Antitrust Law*, pp.1-12. Available at <<https://www.justice.gov/atr/page/file/1042806/download>> [Last accessed on June 15, 2021]. See R. Shyam Khemani, *Application of Competition Law: Exemptions and Exceptions*, United Nations Conference on Trade and Development (UNCTAD), United Nations, New York and Geneva, 2002, pp.1-15. Available at <https://unctad.org/system/files/official-document/ditccplmisc25_en.pdf> [Last accessed on June 15, 2021]. See also Arie Reich, *Agricultural Exemption in Antitrust Law: A Comparative Look at the Political Economy of Market Regulation*, Bar-Ilan University Public Law and Legal Theory, Working Paper No.06-7, November 2006, pp.1-43. Available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=944389> [Last accessed on June 15, 2021]. See again Dr. Iwakazu TAKAHASHI, *Anti-monopoly Act Exemptions in Japan*, Specific Workshop between the Drafting Committee on Competition Law of Vietnam and the Japan Fair Trade Commission, August 8, 2003, pp.1-9. Available at <<https://www.jftc.go.jp/eacpf/05/hanoiTaka.pdf>> [Last accessed on June 15, 2021].

³⁶² For further details on these conditions of collaboration refer the second chapter of this thesis elucidated under the caption Common horizontal collaborations in the insurance sector under section 2.6.

competition or the efficiency gain is only to the company that disregards the interest of consumers. The interest of all stakeholders (consumers, the company or the economy at large) can only be balanced by making all requirements cumulative.³⁶³ The country's competition legal regime does not also have a horizontal cooperation guideline that may clarify the blurred points and elucidate specific areas of collaboration.³⁶⁴ In the discussions to follow, the study canvassed the practical implementations of common horizontal collaborations (strategic alliances) in the Ethiopian insurance industry.

3.7 Cooperation in the Standardization of Insurance Terms and Conditions

So long as the agreement to standardize policy terms and conditions does not “restrict the free negotiation of price and do not affect the interest of consumers”, a standardization agreement is permissible in most jurisdictions.³⁶⁵ In Ethiopia, terms and conditions of insurance policies are under the close supervision and regulation of the National Bank.³⁶⁶ Specifically, the National Bank of Ethiopia is empowered to examine insurance terms and conditions to verify whether the interest of policyholders is jeopardized.³⁶⁷ However, there is no standardization effort by the National Bank or among insurers yet.³⁶⁸ Moreover, the contract terms and conditions are written in English version only which could complicate the problem further. Standardization of terms and conditions is unlikely in the absence of some form of compulsion from the regulatory authority.³⁶⁹ Nonetheless, standardization, as an exception to competition, is not mandatorily

³⁶³ For further details about the requirements of horizontal cooperation and the cumulateness of the requirements see the second chapter of the thesis under the caption “common horizontal collaborations in the insurance sector”.

³⁶⁴ Some jurisdictions illuminate areas of horizontal collaboration in their horizontal cooperation guideline. See for instance, the Draft Guidelines of the European Union on the Applicability of Article 101 of TFEU. See also Federal Trade Commission and the U.S Department of Justice, *Antitrust Guidelines for Collaborations Among Competitors*, 2000, pp.1-38. Available at <https://www.ftc.gov/sites/default/files/documents/public_events/joint-venture-hearings-antitrust-guidelines-collaboration-among-competitors/ftcdojguidelines-2.pdf > [Last accessed on 20 May 2021].

³⁶⁵ See Bulgarian Law on the Protection of Competition, Article 15. See also R.H. Jerry II, *The Antitrust Implications of Collaborative Standard Setting*, pp.407-408. See also Richard and David, *Competition Law*, pp.610-611.

³⁶⁶ See Solomon Abay, *Financial Market Development, Policy and Regulation*, p.91.

³⁶⁷ *Ibid.*

³⁶⁸ Interview with Mr. Sewasew Paulos, Mr. Samuel Workneh, Ms. Habtam Abate, Mr. Yared Molla, Mr. Matias Firdie, Mr. Yosef Wubshet, Mr. Shumetie Zerihun, and Mr. Bekalu Tilahun, on *the Standardization of Insurance Policy Terms and Conditions in the Insurance Sector*, *supra note* 378. Interview with Ms. Kidest Abebe, Underwriting officer of Zemen Insurance S.C, on *the Standardization of Policy Terms and Conditions*, 14 April, 2021.

³⁶⁹ See R.H. Jerry II, *The Antitrust Implications of Collaborative Standard Setting*, p.441.

required in competition law.³⁷⁰ This is chiefly because so long as the regulator is diligent to check the terms and conditions of each insurer so that the interest of consumers remain protected, standardization might not be necessarily required.³⁷¹ Moreover, the absence of standardization from the external body enables insurers to enhance innovation and offer better terms and conditions they deemed vital to attract customers.³⁷² Accordingly, neither the NBE nor the Association of Ethiopian Insurers should be cursed for not coming up with standardized policy terms and conditions for the insurance sector.

3.8 Access to Data (Information Exchange) Collaboration

The charging of premium commensurate to the level of risk exposure demands acquiring the necessary information about the risk exposure of the risk category that perhaps is unlikely to be obtained from the insured.³⁷³ To escape such a dilemma, insurance companies need to share some information that enables them to determine actual premium attractive to both high and low-risk individuals.³⁷⁴ Sharing of data (historical and aggregated) is justified by reasons born out of information asymmetries such as problems of moral hazard and adverse selection.³⁷⁵ Turning to the case in Ethiopia, the only specific law that allows insurers to share data among them to avoid the problems of information asymmetry³⁷⁶ is the National Bank directive that allows insurers to exchange information about the list of defaulters on outstanding premiums.³⁷⁷ It requires insurers to submit the name of premium defaulters who failed to pay a premium exceeding 10,000 birr to the Association of Ethiopian Insurers that in turn is required to disseminate the information to the

³⁷⁰ See the Draft Guidelines on the Applicability of Article 101 of TFEU, p.68.

³⁷¹ Telephone Interview with Ms. Kibre Moges, Legal Services Directorate Director of National Bank of Ethiopia, on *the Standardization of Insurance Policy Terms and Conditions in the Insurance Sector*, 25 June, 2021.

³⁷² See the Draft Guidelines on the Applicability of Article 101 of TFEU, p.68.

³⁷³ See Donnatela Porrini, Risk Classification Efficiency and the Insurance Market Regulation, pp.447-448.

³⁷⁴ *Id.*, p.447.

³⁷⁵ Robert W. Klein (PhD.), *A Regulator's Introduction to the Insurance Industry*, p.10. See also Christopher Parsons, Moral Hazard in Liability Insurance, pp.452-453. However, information exchange shall be meticulously regulated to avoid the dangers of collusion. See again Donnatela Porrini, Risk Classification Efficiency and the Insurance Market Regulation, p.447.

³⁷⁶ Of course, as the discussion made in the previous part indicates, by virtue of Article 7(1) (a) and Article 4(2) of TCCPP, our competition law permits cooperation. But, it demands further elaboration on the attached conditions and exempted sectors.

³⁷⁷ See National Bank of Ethiopia, Licensing and Supervision of Insurance Business, Information Exchange Scheme on Outstanding Premium, Directive No. SIB/36/2013. [Hereinafter, Information Exchange Scheme on Outstanding Premium, Directive No. SIB/36/2013].

National Bank of Ethiopia and all insurers.³⁷⁸ However, even this kind of information exchange is not practically made among insurers.³⁷⁹ This is because though the association was established long before this directive, insurers are vigorously following their independent action that at times harm the industry and the association is not strong enough to coordinate insurers.³⁸⁰ In addition, there is no specific directive that empowers insurance companies to share historical and aggregated data on mortality table, frequency of illness, the incidence of an accident, geographical setting, quality of the building etc.³⁸¹ The existence of such kinds of laws that empower insurers to share certain vital data would facilitate entry into the market and the premium determination of insurers would also be commensurate to the level of risk exposure of the insured that in effect attracts both high and low-risk individuals into the company.³⁸² By way of conclusion, it should be noted that insurers in Ethiopia are not exchanging data (information) and the country's competition law lacks profound clarity on the kind of permissible information insurers are allowed to exchange.³⁸³ Similarly, the National Bank of Ethiopia does not have any specific regulation except the aforementioned directive on the information exchange scheme on outstanding premiums.³⁸⁴

³⁷⁸ See Information Exchange Scheme on Outstanding Premium, National Bank of Ethiopia Directive No. SIB/36/2013, Article 4.

³⁷⁹ Interview with Mr. Endale Dejen, Education and Promotion Co-coordinator, Association of Ethiopian Insurers, on *the Horizontal Collaboration of Insurers in Ethiopia*, April 12, 2021.

³⁸⁰ The Association of Ethiopian Insurers was founded in 1990. See more about the association in the link <<https://www.associationofethiopianinsurers.com/>> [Last accessed on June 2, 2021]. Furthermore, according to Mr. Endale, the association can only recommend better ways of doing business. As it is not a regulatory body, most of the problems can be solved by the National Bank of Ethiopia. Interview with Mr. Endale Dejen, Education and Promotion Co-coordinator, Association of Ethiopian Insurers, on *the Horizontal Collaboration of Insurers in Ethiopia*, April 12, 2021.

³⁸¹ Interview with Mr. Endale Dejen, Education and Promotion Co-coordinator, Association of Ethiopian Insurers, on *the Horizontal Collaboration of Insurers in Ethiopia*, April 12, 2021. Interview with Mr. Bekalu Tilahun, Awash Insurance S.C Legal and Advisory Services Directorate Director, on *the Data Exchange Collaboration in the Insurance Sector*, April 11, 2021. Interview with Mr. Sewasew Paulos, Marketing and CRM Division Head, Nile Insurance S.C, on *the Information Exchange Scheme of Ethiopian Insurers*, April 12, 2021. Interview with Mr. Shumetie Zerihun, CEO of Zemen Insurance S.C, on *the Insurers Cooperation in Exchange of Information*, April 14, 2021.

³⁸² Interview with Mr. Shumetie Zerihun, CEO of Zemen Insurance S.C, on *the Information Exchange Collaboration among Insurers*, April 13, 2021. Interview with Tibebe Tilahun, Insurance Trainer and Consultant, on *Access to Data Coordination among Insurers*, April 15, 2021.

³⁸³ The discussion made in the second chapter of this thesis should be consulted here. There the research made a profound discussion on the type of data that ought to be exchanged among insurers and attached conditions that intend to avoid anti-competitive tendency are elaborated. Simply a separate legislation is required in our laws to enable insurers' collaboration on some data.

³⁸⁴ Telephone interview with Ms. Kibre Moges, NBE Legal Services Directorate Director, on *the Information Exchange Scheme among Ethiopian Insurers*, 25 June, 2021.

3.9 Research and Development (R&D) Collaboration among Insurers in Ethiopia

Research and development collaboration is one of the common areas in which companies cooperate and invest resources to innovate new products and introduce technology to their business. In the current dynamic business world, strategic alliances have become a notorious method of conducting business.³⁸⁵ Research and development collaborations are one of the common areas of a strategic alliance among insurance companies in the business world. Additionally, research and development collaboration is useful because; if the insurance service is completely new, insurers do not have historical data depending on which they can set the future premium.³⁸⁶ Furthermore, research and development are also vital for unconventional risks for which the frequency of occurrence and magnitude of risk is not well known.³⁸⁷ However, experts in the Ethiopian insurance sector argued that each insurance company toils unilaterally to attract customers through reducing the premium rate that disturbs the harmonious relation of insurers.³⁸⁸ The problems mentioned in various parts of this paper such as lack of product diversity, the use of obsolete technology and the dearth of innovation in the insurance sector can be minimized (if total avoidance is impossible) had insurers come to a closer alliance and undertake scientific studies and awareness creation campaigns through research and development.³⁸⁹

³⁸⁵ See T.A. Piraino, Beyond Per se, Rule of Reason or Merger Analysis: A New Antitrust Standard for Joint Venture, *Supra note* 114, p.3.

³⁸⁶ See EC Draft Guideline on the Applicability of Article 101 of TFEU, pp.31-34.

³⁸⁷ *Ibid.*

³⁸⁸ Interview with Mr. Mesfin Eyasu, Marketing Manager of United Insurance S.C, on *Insurers Cooperation in R&D*, April 13, 2021. Interview with Shumetie Zerihun, CEO of Zemen insurance S.C, on *Insurers Cooperation in R&D*, April 14, 2021. Interview with Mr. Yosef Wubshet, Principal Officer of HRD at EIC, on *Insurers Cooperation in R&D*, April 11, 2021. See also Interview with Mr. Sewasew Paulos, Marketing and CRM Division Head, Nile Insurance S.C, on *Insurers Cooperation in R&D*, April 12, 2021. Interview with Mr. Samuel Workneh, Awash Insurance S.C, Finfinie Division vice Executive Officer, on *Insurers Cooperation in R&D*, April 11, 2021. Interview with Ms. Habtam Abate, Strategy and Change Management Customer Service Officer of Nyala Insurance S.C., on *Insurers Cooperation in R&D*, April 13, 2021. Interview with Mr. Yared Molla, CEO of Nyala Insurance S.C, on *Insurers Cooperation in R&D*, April 13, 2021. Interview with Mr. Yosef Wubshet, Principal Officer of Human Resource Development, Ethiopian Insurance Corporation, on *Insurers Cooperation in R&D*, April 11, 2021. Interview with Mr. Matias Firdie, Claims Supervisor of United Insurance S.C, on *Insurers Cooperation in R&D*, April 13, 2021. Interview with Mr. Bekalu Tilahun, Awash Insurance S.C Legal and Advisory Services Directorate Director, on *Insurers Cooperation in R&D*, April 11, 2021. Telephone interview with Mr. Tibebe Tilahun, Insurance Trainer and Consultant, on *Insurers Cooperation in R&D*, 20 April, 2021.

³⁸⁹ Telephone interview with Mr. Tibebe Tilahun, Insurance Trainer and Consultant, on *Research and Development Coordination in the Ethiopian Insurance Sector*, June 11, 2021.

3.10 Reinsurance Collaboration among Insurers in Ethiopia

The Ethiopian insurance sector was in operation without a reinsurance regulatory legal framework for a long time.³⁹⁰ However, despite the absence of a national reinsurance company and regulatory framework, insurers made a reinsurance agreement with foreign reinsurers.³⁹¹ Interestingly, after decades of operation without a regulatory legal framework, the National Bank of Ethiopia introduced a reinsurance directive and a directive that deals with reinsurance company establishment.³⁹² Following this, the Ethiopian Reinsurance S.C (shortly, Ethiopian Re) which commenced operation on 1st July 2016 transacting both life and general reinsurance business was incorporated.³⁹³ The directive requires primary insurers to cede at least 25% of its treaty session and 5% of each policy the insurer underwrites to a reinsurance company licensed under the current insurance business proclamation.³⁹⁴ Moreover, the directive gives the Ethiopian Reinsurance S.C “the right of first refusal in all facultative placements.”³⁹⁵ This right empowers the company the first right to accept (or if it does not want, to reject) the reinsurance ceding of insurers before any other reinsurance company.³⁹⁶ Thus, reinsurance which is considered an

³⁹⁰ Specifically Article 37 of the Insurance Business Proclamation declared that “*the manner in which reinsurance business may be transacted shall be determined by directives to be issued by the Bank.*” See Mezgebe Mihretu, *The Ethiopian Insurance Industry and the Reinsurance Business*, p.10.

³⁹¹ See Shimeles Beyene, *Analysis of Market Power and Competitiveness of the Ethiopian Insurance Industry*, p.3.

³⁹² See Licensing and Supervision of Insurance Business Amendment to Manner and Criteria of Transacting Reinsurance, Directive No. SIB/53/2020. [Hereinafter, Amendment to Manner and Criteria of Transacting Reinsurance, Directive No. SIB/53/2020.].

³⁹³ See more about Ethiopian Reinsurance S.C in the link<<https://www.ethiopianre.com/shareholder.html>> and <<https://www.ethiopianre.com/index.php/the-company/background-of-the-company>> [Last accessed on June 10, 2021]. The company’s shareholders’ include insurance companies (seventeen in number) that constitute 66.9% of shareholding, banks (seven in number) that purchase 30.76% of shareholdings, one trade union constituting 0.01% of shareholdings and individuals (eighty in number) whose shareholding is 2.33% of shareholdings. The subscribed share capital of the company is 1billion birr. *Ibid.*

³⁹⁴ See Amendment to Manner and Criteria of Transacting Reinsurance, Directive No. SIB/53/2020, Article 5(2).

³⁹⁵ *Ibid.* Facultative placement (reinsurance) is one type of reinsurance defined under the directive as “reinsurance of individual risks by offer and acceptance wherein the reinsurance company retains the ability to accept or reject each risk offered by a ceding company.” See again, Amendment to Manner and Criteria of Transacting Reinsurance, Directive No. SIB/53/2020, Article 2.11.

³⁹⁶ This right, the Right of First Refusal (ROFR), is like a right of preemption that is usually a common right among co-owners of a property found under Article 1410 (2) of the civil code of Ethiopia. While preemption right is “a right driving from an agreement whereby the owner of a thing undertakes to sell such thing in preference to a specified person, should the owner decide to sell it”, the right of first refusal to deal in the context of reinsurance, on the other hand, indicates the right of the reinsurance company to be consulted first in case primary insurers need to cede a portion of their risk to a reinsurer. To put it differently, primary insurers can only resort to other reinsurer if and only if the reinsurance company enjoying the right of first refusal refuses to accept their portion of risk insurers decide to cede. See David I. Walker, *Rethinking Rights of First Refusal*, The Center for Law, Economics, and Business, supported by a grant from the John M. Olin Foundation, Harvard Law School, Cambridge,

important risk management tool for insurance companies is legally recognized and a reinsurance company is established in the country by the end of 2016. Despite these improvements, as it stands now, Ethiopian insurers spent a huge amount of money (in foreign currency) to purchase reinsurance for risks exceeding their risk appetite (retention capacity) to various alien reinsurance companies such as Africa Re, Swiss Re, Munich Reinsurance Corporation, Tunis Re, Zurich Re, IRB Brazil Re, Z.E.P Re, and Afro-Asian Reinsurer.³⁹⁷ The retention capacity of Ethio Re is limited and Ethiopian insurers are transacting reinsurance with foreign reinsurers.³⁹⁸ Accordingly, much remains to be done to strengthen the Ethiopian Reinsurance company to secure the ceding premium to foreign reinsurers in foreign currency.³⁹⁹ Furthermore, as it is elaborated under the second chapter, reinsurance collaboration may lead to the transparency of prices charged and agreed by an insurer with its clients.⁴⁰⁰ The coordination that involves regular and frequent sharing of information might have the effect of disclosing the “market positions and strategies” of competitors that in consequence would harm competition.⁴⁰¹ However, in the Ethiopian scenario, the Competition and Consumer Protection Authority does not have any means to ascertain the possibility of anticompetitive exposures.⁴⁰² The reinsurance

Discussion Paper No.261, pp.8-10. Available
at <http://www.law.harvard.edu/programs/corp_gov/papers/No261.99.Walker.pdf> [Last accessed on 10 June 2021].

³⁹⁷ The source is the website of insurance companies and documents (brochures) the researcher obtained from the selected insurers.

³⁹⁸ See Mezgebe Mihretu, *The Ethiopian Insurance Industry and the Reinsurance Business*, p.7.

³⁹⁹ Interview with Mr. Mesfin Eyasu, Marketing Manager of United Insurance S.C, on *Insurers Cooperation in Reinsurance*, April 13, 2021. Interview with Shumetie Zerihun, CEO of Zemen insurance S.C, on *Insurers Cooperation in R&D*, April 14, 2021. Interview with Mr. Yosef Wubshet, Principal Officer of HRD at EIC, on *Insurers Cooperation in Reinsurance*, April 11, 2021. See also Interview with Mr. Sewasew Paulos, Marketing and CRM Division Head, Nile Insurance S.C, on *Insurers Cooperation in Reinsurance*, April 12, 2021. Interview with Mr. Samuel Workneh, Awash Insurance S.C, Finfinie Division vice Executive Officer, on *Insurers Cooperation in Reinsurance*, April 11, 2021. Interview with Ms. Habtam Abate, Strategy and Change Management Customer Service Officer of Nyala Insurance S.C., on *Insurers Cooperation in Reinsurance*, April 13, 2021. Interview with Mr. Yared Molla, CEO of Nyala Insurance S.C, on *Insurers Cooperation in Reinsurance*, April 13, 2021. Interview with Mr. Yosef Wubshet, Principal Officer of Human Resource Development, Ethiopian Insurance Corporation, on *Insurers Cooperation in Reinsurance*, April 11, 2021. Interview with Mr. Matias Firdie, Claims Supervisor of United Insurance S.C, on *Insurers Cooperation in Reinsurance*, April 13, 2021. Interview with Mr. Bekalu Tilahun, Awash Insurance S.C Legal and Advisory Services Directorate Director, on *Insurers Cooperation in Reinsurance*, April 11, 2021. Telephone interview with Mr. Tibebe Tilahun, Insurance Trainer and Consultant, on *Insurers Cooperation in Reinsurance*, 20 April, 2021.

⁴⁰⁰ See Commission of the European Communities, Commission Staff Working Document, *Sector Inquiry under Article 17 of the Regulation (EC) No.1/2003 on Business Insurance*, Final Report, Brussels, 2007, pp.36-37.

⁴⁰¹ *Ibid.*

⁴⁰² Interview with Mr. Getnet Aschenaf, the Ethiopian Competition and Consumer Protection Authority Complaint Investigation and Case Institution Directorate Director, on *the Anticompetitive detective tools in the Ethiopian Competition and Consumer Protection Authority*, April 13, 2021. According to the expert, the Authority is too weak

amendment directive also entirely focuses on ascertaining the financial soundness of the reinsurer and the primary insurer.⁴⁰³

3.11 Coinsurance Collaboration in the Ethiopian Insurance Market

A coinsurance pool is another mechanism in which insurance companies collaborate to provide insurance services to their clients. Coinsurance indicates the collaboration of multiple insurers to cover the same risk.⁴⁰⁴ It comes in to picture when the amount of risk is beyond the risk appetite of a single insurer.⁴⁰⁵ It is, thus, designed to cover huge risks like industrial fire insurance, climate insurance, drought, flood, ecological risks, terrorism, etc.⁴⁰⁶ In the insurance sector, coinsurance should be seen as a joint venture arrangement or strategic alliance among insurers that if properly implemented would enhance efficiency and consumers' welfare too.⁴⁰⁷ Besides, it is vital to expand the insurance service to the majority of the society vulnerable to huge and catastrophic risks and risks insurers are independently unable to extend their service.⁴⁰⁸ Unfortunately, Ethiopian insurers are not properly utilizing this form of collaboration⁴⁰⁹ as one expects and the regulator of the insurance industry, the National Bank of Ethiopia, does not have a directive that empowers insurers to coinsure a risk together.⁴¹⁰ One may, of course, at this

to detect such exposures or tendencies to anticompetitive behaviour. The Authority is incapable both in expertise and experience to control the financial sector. *Ibid.*

⁴⁰³ See Amendment to Manner and criteria of transacting reinsurance, Directive No. SIB/53/2020, Article 3 up to Article 10.

⁴⁰⁵ See WISH POLICY.com, p.2.

⁴⁰⁶ *Ibid.*

⁴⁰⁷ Interview with Mr. Tibebe Tilahun, on *the Need for Coinsurance Collaboration in Ethiopia, supra note*, 398.

⁴⁰⁸ In the insurance sector, there are two sorts of coinsurance. The focal point of this section's discussion does not include the sharing of a portion of the risk and the insurer that is common in life and property insurance. The joint sharing of risk between the insured and insurer is also named coinsurance. In some literatures' it is also called a "co-pay facility." However, the concern of this topic is the other form of coinsurance i.e. the sharing of a similar risk among two or more insurance companies. See A News Letter from Chicago Underwriting Group, Inc., Underwriters of D&O and Professional Liability Insurance, Issue 21, April 2002, pp.1-2. Available at <<https://cdn2.hubspot.net/hubfs/4078690/ORPRO%20Comments%20Newsletter/cugcomments-21.pdf>> [Last accessed on June 20, 2021]. See also WISH POLICY.com, p.2.

⁴⁰⁹ Exceptionally, the EIC uses coinsurance to a very limited extent with other insurers. However, other interviewees from the selected insurance companies of this study respond that coinsurance is not one of their ways of doing business. Interview with Mr. Yosef Wubshet, Principal Officer, Ethiopian Insurance Corporation (EIC) Human Resource Development, on *the coinsurance collaboration among Ethiopian insurers*, April11, 2021. See also Kehulum Yibeltal, *Climate Insurance under the 2015 Paris Agreement*, p.41.

⁴¹⁰ Interview with Mr. Sewasew Paulos, Marketing and CRM Division Head, Nile Insurance S.C, on *the Coinsurance Collaboration of Ethiopian Insurers*, April 12, 2021. Interview with Mr. Shumetie Zerihun, CEO of Zemen Insurance S.C, on *the Coinsurance Collaboration of Ethiopian Insurers*, April 14, 2021. Interview with Mr. Yared Molla, CEO of Nyala Insurance S.C, on *the Coinsurance Collaboration of Ethiopian Insurers*, April 13,

juncture argue that if the country's competition law allows insurers to collaborate horizontally among themselves on the grounds of efficiency and other pro-competitive gains, insurers in Ethiopia can share a single risk through coinsurance pool. However, coinsurance like reinsurance needs profound legal regulation to determine, among other things, the responsibility of the lead insurer (an insurer underwriting the highest share⁴¹¹), the collection of premium, the administration of coinsurance business, settlement of claims, manner of renewal of the policy, the manner of payment of commissions to brokers, intermediaries and agents, the payment of tax, policy documentation issues, dispute resolution, and reinsurance rights of coinsurers and the lead insurer.⁴¹² Additionally, risks covered under coinsurance pools are huge and catastrophic risks the occurrence of which supposedly could affect the financial muscle of insurers and the wealth of the insured person alike. In turn, this calls for legal intervention from the regulator to protect these bothersome interests. For Ethiopian insurance companies, coinsurance collaboration in some aspects may be preferable than reinsurance collaboration. This is because, first, "reinsurance contracts do not solve the ceding insurer's responsibility to pay the reinsurance claims should the reinsurer fail."⁴¹³ Secondly, the liability of each coinsurer is several that in effect save insurers from being answerable to the claim of defaulting coinsurers. Thirdly, coinsurance does not demand foreign currency to purchase unlike the case of the current

2021. Interview with Mr. Mesfin Eyasu, Marketing Manager of United Insurance S.C, on *the Coinsurance Collaboration of Ethiopian Insurers*, April 13, 2021. Interview with Mr. Yosef Wubshet, Principal Officer of HRD at EIC, on *the Coinsurance Collaboration of Ethiopian Insurers*, April 11, 2021. Interview with Mr. Samuel Workneh, Awash Insurance S.C, Finfinie Division vice Executive Officer, on *the Coinsurance Collaboration of Ethiopian Insurers*, April 11, 2021. Interview with Ms. Habtam Abate, Strategy and Change Management Customer Service Officer of Nyala Insurance S.C., on *the Coinsurance Collaboration of Ethiopian Insurers*, April 13, 2021. Interview with Mr. Yosef Wubshet, Principal Officer of Human Resource Development, Ethiopian Insurance Corporation, on *the Coinsurance Collaboration of Ethiopian Insurers*, April 11, 2021. Interview with Mr. Matias Firdie, Claims Supervisor of United Insurance S.C, on *the Coinsurance Collaboration of Ethiopian Insurers*, April 13, 2021. Interview with Mr. Bekalu Tilahun, Awash Insurance S.C Legal and Advisory Services Directorate Director, on *Insurers Cooperation in Coinsurance*, April 11, 2021. Telephone interview with Mr. Tibebe Tilahun, Insurance Trainer and Consultant, on *Insurers Cooperation in Coinsurance*, 20 April, 2021.

⁴¹¹ The directive is also important to determine the manner how a lead insurer is selected. In most cases, the insurer with largest share is assumed as a lead insurer. But, discretion may also be left to their agreement or the insured may be empowered to determine the lead insurer. See The General Insurance Council of India, *Coinsurance Agreement*, 5th December 2014, pp.1-2. Available at <<https://www.gicouncil.in/regulations/self-regulation/co-insurance/>> [Last accessed on May 11, 2021]. [Hereinafter, General Insurance Council of India, *Coinsurance Agreement*].

⁴¹² *Id*, pp.1-7.

⁴¹³ See BEST's Guide to Understanding the Insurance Industry: An Overview for those Working with and in one of the most Interesting and Vital Industries, 2019 edn., AM Best Company Inc., USA, 2019, P.3. Available at <<http://www.ambest.com/review/UnderstandingInsuranceGuide.pdf>>. [Last accessed on May 11, 2021]. [Hereinafter, AM Best, BEST's Guide to Understanding the Insurance Industry].

reinsurance transaction of Ethiopian insurers.⁴¹⁴ Had Ethiopian insurance companies were coordinating their utmost effort through coinsurance pools at least a portion of the various catastrophic risks Ethiopians are facing would have been absorbed.⁴¹⁵ It is indisputable fact that “risks are present at all stages of people’s lives and business.”⁴¹⁶ Meanwhile, insurers in Ethiopia provide the lion’s share of their services only to those customers that purchase general insurance which in most cases is required by law and their service is constrained to people residing in cities.⁴¹⁷ The majority of the people in the countryside (presumably 85%) despite their exposure to various risks like flood, fire, livestock, crop, weather, drought⁴¹⁸, etc. are not getting insurance services.⁴¹⁹ To recapitulate, insurers in Ethiopia would absorb most of the catastrophic risks had such kind of collaboration is well-practised and collaboration through coinsurance would enable insurers to stretch their services to the majority of the population.⁴²⁰

⁴¹⁴ Interview with Mr. Sewasew Paulos, Mr. Samuel Workneh, Ms. Habtam Abate, Mr. Yared Molla, Mr. Matias Firdie, Mr. Yosef Wubshet, Mr. Shumetie Zerihun, and Mr. Bekalu Tilahun, on *Ethiopian Insurers Coordination through Coinsurance*, *supra* note 410.

⁴¹⁵ *Ibid.*

⁴¹⁶ See AM Best, BEST’s Guide to Understanding the Insurance Industry, p.3.

⁴¹⁷ Interview with Mr. Sewasew Paulos, Mr. Samuel Workneh, Ms. Habtam Abate, Mr. Yared Molla, Mr. Matias Firdie, Mr. Yosef Wubshet, Mr. Shumetie Zerihun, and Mr. Bekalu Tilahun, on *Ethiopian Insurers Coordination through Coinsurance*, *supra* note 410.

⁴¹⁸ Drought is the number one problem in Ethiopia which affects the rural community repeatedly resulting in crop failure, death of livestock etc. See Wolday Amha and *et al*, *Diagnostic Study of Providing Micro-Insurance Services to Low-Income Households in Ethiopia: An Input to National Micro-Insurance Strategy*, ESSPII-EDRI Report, June 2013, pp.25-50. Available at < https://essp.ifpri.info/files/2013/06/ESSPII_EDRI_Report_MicroInsurance.pdf > [Last accessed on June 20, 2021].

⁴¹⁹ See Food and Agricultural Organization (FAO), New Drought Risks in Ethiopia Put Recovery at Risk, *FAO News Story*, p.1. Available at < <http://www.fao.org/news/story/en/item/463081/icode/> > [Last accessed on June 20, 2021]. See also Kehulum Yibeltal, Climate Insurance under the 2015 Paris Agreement, *Supra* note, p.37.

⁴²⁰ Interview with Mr. Sewasew Paulos, Mr. Samuel Workneh, Ms. Habtam Abate, Mr. Yared Molla, Mr. Matias Firdie, Mr. Yosef Wubshet, Mr. Shumetie Zerihun, and Mr. Bekalu Tilahun, on *Ethiopian Insurers Coordination through Coinsurance*, *supra* note 410.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATION

4.1 Conclusion

Competition among market participants has become the principle of the modern market economy. The assumption is that competition benefits all; it encourages businesses to compete for customers that in effect would result in a reduced price for goods and services, increased innovation, better choice and improved quality of goods and services in the market. In Ethiopia, the modern insurance business has more than a century of existence. Despite its longevity, the sector plays a meagre role in the country's economy. This incites the researcher to conduct a study on the horizontal competitive status of insurers by selecting the state-owned Ethiopian Insurance Corporation, Awash Insurance S.C, Nyala Insurance S.C, Nile Insurance S.C, United Insurance S.C, and Zemen Insurance S.C. The central aim of the study was to evaluate the horizontal competitive status of insurance companies in Ethiopia in light of the commonly known competition variables i.e. price (premium), product variety, and innovation and the use of technology. Moreover, the study also aims to show the horizontal collaboration (strategic alliance) among insurers in Ethiopia and the place our Competition and Consumer Protection Proclamation and other subordinate legislations give to horizontal collaboration. Generally, after a thorough scrutiny of these points, the study reached the following points of conclusion.

First, the study found that insurance companies in Ethiopia are wittingly cutting premiums to lure customers and they are now in the situation of a price war. This premium cutting practice is found damaging for the insurance companies and their customers alike by eliminating firms' profit, ability to innovate and eroding customers loyalty, among others. The causes of a price war in the context of the Ethiopian insurance sector are the homogeneity of insurance products (services), lack of qualified experts (especially actuarial experts), and managerial problems. The NBE is statutorily empowered to set a minimum floor premium to save insurers from their deadly act of price-cutting competition but the bank takes any measure yet.

The second point of scrutiny in this thesis was the status of competition among insurers in product (service) variety. It is uncovered that insurers in the country offer traditional and similar

insurance services to their customers. The newly added insurance services are crop insurance, livestock insurance, condominium insurance and floriculture insurance. Amongst those new insurance services, crop and livestock insurance are currently offered for investors that make these services unavailable for the mass of small-holder farmers. Thus, their competition in introducing a variety of products is very low.

The third area of concern was competition among insurers in innovation and the use of modern technology. The study found that the Ethiopian competition law (TCCPP) allows insurers to collaborate among them if “technological, efficiency and another pro-competitive gain” that outweigh the anticompetitive result is acquired from the coordination. Further, the current Insurance Business (Amendment) Proclamation allows the NBE to enact a directive on digital insurance services. But, the NBE does not have a specified directive until this day. Insurers in the country are found poor at innovation and use of technology. Specifically, online system of insurance application, online claims notification (saving Awash and Lion Insurance Companies), digital customer advising and follow up (CRM), BIMA, e-insurance are unavailable. The dearth of experts, the closeness of the sector from foreign competition, the absence of actuarial (data) science experts and the absence of legal framework are the reasons that contributed to their poor competition in innovation and use of technology.

The other point of discussion was the legal and practical situations of horizontal collaboration (strategic alliances) in the insurance sector of the country. Concerning the legal regime, the TCCPP under Article 7(1) (a) follows a rule of reason standard of analysis that allow competitors to collaborate provided that technological, efficiency or other procompetitive gain exceeding the anti-competitive effect of the coordination are present. Besides, under Article 4(2) of the same proclamation, the Council of Ministers is empowered to exempt certain sectors “vital for economic development” by regulation from the scope of TCCPP. The phrase “vital for economic development” is found to be confusing for every sector has a contribution to economic development and one of the goals of competition law (including TCCPP) is the acceleration of economic development. Though the insurance sector is one of the sectors the exemption extends, the Council of Ministers enacts no specific exemption regulation yet. Furthermore, the attached conditions for coordination are found sufficient to protect the interest of all parties. Technological, efficiency and other pro-competitive gains are the conditions stipulated in the

TCCPP. The conditions of pass on to consumers, indispensability and the non-elimination of competition that are vital to balance the interest of all parties can be engulfed in our law through the interpretation of the phrase “other pro-competitive gains.” However, in the TCCPP the attached conditions for horizontal collaboration are not cumulative.

The final part of the thesis covered the horizontal coordination (strategic alliance) among insurers in Ethiopia. Because of asymmetry of information, prospective nature of insurance price determination, moral hazard and adverse selection problems, coordination in some areas is common in the insurance sector. One of the areas wherein insurers collaborate is the standardization of insurance contract terms and conditions. In Ethiopia, insurance contract terms and conditions are supervised by the National Bank. Standardization efforts are not yet made in the sector. But, seen from the perspectives of competition law standardization is not mandatory. And the freedom accorded for insurers to come up with their terms and conditions with the close supervision of the NBE is the approach adopted in Ethiopia.

Information exchange (access to data) is the other area of coordination. In the Ethiopian insurance sector, there is one regulation that requires insurers to exchange information on outstanding premiums through the Association of Ethiopian Insurers. However, in practice, they are not exchanging this data. Another directive that allows insurers to exchange aggregated and historical data on incidences of accident, mortality table, frequency of illness, geographical setting, quality of building etc. are unavailable. The other area of strategic alliance is in research and development. But, insurance companies in the country are poor on this sort of collaboration.

The other area where coordination is common is through reinsurance. Interestingly, recently the NBE comes up with a directive for the reinsurance business operation and reinsurance company establishment. Accordingly, the Ethiopian Reinsurance S.C is established in which the majority of shareholdings of the company are owned by Ethiopian insurers. The establishment of Reinsurance Company is a move forward for the insurance sector, but much remains to be done in improving the company’s retention (risk absorption) capacity to prevent the ceding premium to foreign reinsurance companies and make the sector competitive. The last part of the study focuses on coinsurance (insurance of risk by collaboration). However, such kind of coordination is not common in the Ethiopian insurance sector and there is also no specific law that allows such coordination.

4.2 Recommendation

To solve the aforementioned legal and practical problems surrounding the horizontal competition atmosphere of Ethiopian insurers, the researcher forward the subsequent recommendations.

- ❖ To escape the existing price war, insurance companies in Ethiopia should give proper emphasis to other ways of competition like brand loyalty, innovation and technology, and the provision of new insurance services. Besides, the National Bank of Ethiopia in consultation with the Association of Ethiopian Insurers should enact a minimum (floor) premium to save insurance companies from the current price war (price-cutting competition).
- ❖ Ethiopian Insurance Companies should introduce new insurance services to absorb the risk needs of the community. Specifically, the sector needs to expand its service for the rural community through crop insurance, livestock insurance, climate insurance, flood insurance, drought insurance, and insurance for pests. In short, insurers should compete in the market by introducing new services to the industry and extending their services to the mass of the population.
- ❖ Insurance Companies in the country should employ modern technology in their business undertaking. Digital systems of insurance service application, claims notification, customer advising and follow up, sales and distribution through BIMA and digital (e-insurance) should be introduced and insurance companies should compete in this regard. For this to happen, the regulator of the sector, NBE, should also introduce a specific directive that regulates digital insurance services.
- ❖ Data (actuarial) science at its advanced level should be given in the education system of the country to solve the dearth of actuarial experts in the insurance sector.
- ❖ The provision of the TCCPP on horizontal coordination requirements should be amended in a manner that made horizontal collaboration conditions cumulative requirements.
- ❖ The Council of Ministers as per the power vested to it under Article 4(2) of TCCPP should enact a regulation that exempts insurers from the applicability of competition law in some areas to minimize the risks of information asymmetry such as adverse selection and moral hazard. Alternatively, a clear horizontal cooperation guideline that identifies areas of horizontal collaboration between competitors should be enacted by the

Competition and Consumer Protection Authority of Ethiopia to facilitate a strategic alliance between insurers.

- ❖ Concerning information exchange collaboration among insurance companies, an information exchange directive (guideline) that permits insurers to exchange historical and aggregated data on the incidence of an accident, geographical setting data, frequency of illness, mortality table etc. needs to be introduced by the NBE. Insurers should also utilize the existing law that allows them to exchange data on outstanding premiums.
- ❖ Concerning research and development collaboration, insurers in Ethiopia should coordinate their efforts in research and development to introduce new services, make awareness creation campaigns and acquire efficient ways of doing business.
- ❖ The Ethiopian Reinsurance S.C should be further strengthened to boost its risk absorption capacity so that it can retain the ceding premium to foreign reinsurance companies. Further, the Ethiopian Competition and Consumer Protection Authority should also closely supervise the reinsurance company to avoid the dangers of anticompetitive coordination among insurers.
- ❖ The NBE should come up with a co-insurance coordination directive to enable insurance companies to ensure huge and catastrophic risks exceeding their risk appetite together.
- ❖ Generally, insurers in Ethiopia should compete in introducing diversified insurance services, innovation and technology. Besides, their competition in premium should be healthy and the existing price war shall be avoided. They shall also make strategic alliances to improve the existing meagre competition in the sector.

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6. Interview with Ms Habtam Abate, Strategy and Change Management Customer Service Officer of Nyala Insurance S.C., on *the Competition and Collaboration of Ethiopian Insurers*, 13 April 2021.
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8. Interview with Mr Matias Firdie, Claims Supervisor of United Insurance S.C, on *Horizontal Competition and Collaboration of Ethiopian Insurers*, 13 April 2021.
9. Interview with Mr Bekalu Tilahun, Awash Insurance S.C Legal and Advisory Services Directorate Director, on *Insurers Cooperation and Competition in Ethiopia*, 11 April 2021.
10. Telephone interview with Mr Tibebe Tilahun, Insurance Trainer and Consultant, on *Insurers Cooperation and Competition*, 20 April 2021.
11. Interview with Mr Getnet Aschenaf, the Ethiopian Competition and Consumer Protection Authority Complaint Investigation and Case Institution Directorate Director, on *the Anticompetitive Detective Tools in the Ethiopian Competition and Consumer Protection Authority*, 13 April 2021.
12. Interview with Mr Endale Dejen, Education and Promotion Co-coordinator, Association of Ethiopian Insurers, on *the Horizontal Collaboration of Insurers in Ethiopia*, 12 April 2021.
13. Telephone Interview with Ms Kibre Moges, Legal Services Directorate Director of National Bank of Ethiopia, on *the Legal Ethiopian Legal Regime on Insurers competition and Cooperation*, 26 June 2021.

14. Interview with Ms Kidest Abebe, Underwriting officer of Zemen Insurance S.C, on *the Standardization of Policy Terms and Conditions*, 14 April 2021.

VIII. Lecture and Speeches

1. Alexander Italianer, *Competition Agreements under the EU Competition Law*, Speech Delivered at the 40th Annual Conference on Antitrust law and Policy, Fordham Competition Law Institute, New York, 26 September 2013.
2. Habtamu Simachew (PhD), *Financial Markets and Institutions*, Lecture Delivered at the School of Law, Bahir Dar University, 20 November, 2019.
3. Solomon Abay, *Competition Policy and Law*, Lecture Delivered at the School of Law, Bahir Dar University, 15 December, 2019.

Annex

Interview Guides Prepared for Experts of Insurance Companies, National Bank of Ethiopia, Association of Ethiopian Insurers and Ethiopian Competition and Consumer Protection Authority.

Personal Details of the Interviewees

Name of the Respondent (if he/she consented) _____

Type of the Study: A Master thesis in Law (L.L.M).

Title: A Critical Analysis of Horizontal Competition in the Ethiopian Insurance Sector

The interview aims to gather data on the horizontal competitive status of Ethiopian insurers and consequently suggest possible solutions for the identified problems. Thus, you are kindly requested to give your views for your information is helpful to the effective undertaking of the study. Your identity will be kept confidential and anonymous unless you consented to the disclosure of your identity and personal views.

Thank you, for your cooperation!

Guiding Questions

To Experts of Insurance Companies'

1. What techniques does your company employ to attract and retain customers?
2. Do you think that the existing legal framework is a barrier to proper competition among insurers?
3. What looks like the existing competition among insurers in the setting of premiums?
4. What are the distinguished insurance products (services) your company offers to its consumers?
5. What are the new technologies your company introduce to modernize and ease the doing of the insurance business?
6. Do Ethiopian insurers collaborate horizontally in the standardization of terms and conditions, R&D, information exchange, reinsurance and coinsurance?

To the Experts of National Bank of Ethiopia

1. How do you ascertain the interest of policyholders in the policy terms and conditions of insurance companies?
2. Do you have a digital insurance directive?
3. What are the reasons for the low contribution of the insurance sector to the country's economy?
4. Do you have a separate guideline (directive) on coinsurance, information (data) exchange and R&D collaboration among insurers?
5. Do you think that insurance companies are competitive in product variety, technology and innovation and premium determination?

To the Experts of Ethiopian Competition and Consumer Protection Authority

1. What are the anti-competitive detection tools the Authority employ to detect restraints to competition in Ethiopia?
2. Does the Authority have the means to control the anti-competitive tendencies of insurers' horizontal coordination such as reinsurance, coinsurance and information exchange?