Commodity exchanges in Africa: The role of dispute resolution

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Map of Commodity Exchanges in Africa
Potential Disputes in a CE 1/2

• **Disputes generated by the Physical Commodity Chain**

Commodities exchanges ≠ Stock Exchanges

Production ➔ Transport ➔ Warehousing ➔ Delivery

⇒ Technical Claims (late delivery, delivery of non conforming contractual goods, failure to give essential notices)
⇒ Quality or quantity (inefficiency of warehousing)
⇒ Payment delays
Potential Disputes in a CE 2/2

• **Dispute generated by the Role of each participant**
  ⇒ **Buyers vs Sellers**: Buyer buys the commodity to the Seller. Need of quality and quantity
  ⇒ **Exchange vs Traders**: Exchange is Counterparty to traders and guarantees performance
  ⇒ **Brokers vs Clients**: Broker executes the trade and take the risk on behalf of a client

• **Possibility of fraud**
  NSEL SCAM in India (2013)
Differents system of ADR

- **Mediation**: operates before any litigation
- **Arbitration**: panels of experts appointed to settle the dispute

Arbitration systems are notably used in the following African CEs:
- Nigeria/ASCE
- Malawi/ACE
- Rwanda
- South Africa/SAFEX
- Ethiopia
- Ghana (arbitration or mediation)
Arbitration and other systems of disputes resolution

- Arbitration ≠ Exchange’s disciplinary panels
  - Market abuse
  - Contraventions to the exchange rules
  - Rwanda: Exchange disciplinary commission expels and sanctions Member for offenses to the Exchange Rules

- Arbitration ≠ sanctioning by public regulator
  In GCX (Ghana), the Securities and Exchange Commission established under section 1 of the Securities Industry Regulations, 1993 PNDCL 333, specifies the codes of conduct, accredits and takes sanctions against the member of the Exchange

- Arbitration ≠ industry self-regulator
  Jurisdictions like United States
Legislative and Jurisdictional framework for arbitrators

• What is the force of the arbitration award?
  Arbitration award may find their force in:
  ⇒ The law
  ⇒ The rules of the exchange (by contract)
  ⇒ The exchange’s regulator

• Implications
  ⇒ Enforceability
    * Award is final and binding
    * Sanction mechanisms if the parties refuse to apply an award
  ⇒ Appeal
    * The appeal must be coherent and must not contrast with the objectives of the ADR
    * No right to appeal in most of the systems (Malawi, South Africa WRS)
What do Commodities Exchange need?

- Standardization ➔ equally applied among Members
- Quickness of decision ➔ capacity of arbitrators
- Effectiveness ➔ must be binding/not subject to appeal
- Neutrality ➔ not favor the Exchange/a Member against another

Typically, what can affect this neutrality is:

⇒ The fees that are payable by the party that refers to arbitrators
⇒ The dependence of the arbitrators toward the Exchange, when the dispute involves the Exchange
What do Commodities Exchange have?

- **Lack of Legal or Technical Capacities**
  - Adaptation issues
    - Arbitrators may not be adapted (example of SAFEX in South Africa, where the arbitrators are the same for the Stock Exchange and for the CE)
  - Law capacities
    - Arbitrators are sometimes professionals and not properly lawyers or judges (example of ASCE in Nigeria)

- **Conflict of Interests**
  - Problem with the fee structure: example in Malawi

- **Risk of Corruption**
  - Ethiopian scandal of 2012
Our proposals

• Widening the scope of Experts in commodities among PRIME members
  ⇒ Recruiting specialists of Commodities markets
  ⇒ Training the existing arbitrators to the Commodities markets

• Set up a committee of international arbitrators from PRIME to deal with African CEs disputes
  ⇒ Create panels from which arbitrators could be appointed to settle a dispute
  ⇒ Defining precise eligibility criteria for arbitrators
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