



**Botswana Competition Policy
National Reference Group Meeting
17th March, 2006
Fairground Holdings,
Gaborone**

Meeting Report

Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa

7Up3 Project

National Reference Group Meeting

Date: 17th March, 2006

Venue: Fairground Holdings

Place: Gaborone, Botswana

Partner Organisations:



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Abbreviation

BIDPA	Botswana Institute for Development Policy Analysis
BNPC	Botswana National Productivity Centre
BOCONGO	Botswana Council of Non Government Organisations
C-CIER	Centre for Competition, Investment and Economic Research
COMESA	Common Market for Eastern and Southern Africa
CUTS	Consumer Unity Trust Society
DFID	Department for International Development, UK
INC	International Competition Network
INCSOC	International Network of Civil Society Organisations
NORAD	Norwegian Agency for Development Co-operation
NRG	National Reference Group
PCP	Preliminary Country Paper
SACU	Southern African Customs Union
SADC	Southern African Development Community

Acknowledgement



Mr. B. Mogotsi
Program Manager
BOCONGO

Botswana does not have a Competition Law. The parliament has passed the competition policy, but it still needs inputs and further consultation before it becomes a law. The need for a Competition Policy and Law has long been recognized. At this junction it's quite necessary to involve civil society organizations in the process and build consensus amongst various stakeholders.

This National Reference Group Meeting wouldn't have been possible without support from CUTS and BIDPA. I take this opportunity to thank them for their sincere efforts towards the same. I would also like to thank DFID and NORAD for supporting their support in making this meeting a big success. In the end I would also like to thank BOCONGO Secretariat and Fairground Holdings for facilitating and hosting the event.

We hope to receive the same help and co-operation in future.

Mr. B. Mogotsi,
Programs Manager,
BOCONGO.

Background Information: CUTS Project

7-Up3: Capacity-building on Competition Policy in Select Countries of Eastern and Southern Africa

1. Project Summary

CUTS' runs a research and advocacy project on competition regimes in seven developing countries entitled 7 up project. Phase one of the projects was concluded in 2003 and is said to have been very successful in raising awareness and stimulating debate on competition issues and helping in reforms in the project countries. This has created a felt-need to take up similar activities in other countries as well. Consequently, CUTS has taken up another project in selected Asian Countries, titled 7-Up2. Similarly, a strong need for such a project has been felt in the Southern and Eastern Africa region. An important finding of the project is that it is necessary to have a regional approach to competition policy in the region as the national markets in the region are getting integrated.

The national markets in the region are integrating through three regional bodies, viz., COMESA, SADC and EAC with considerable geographical overlap. All these bodies have recognized the mal-effects of anti-competitive practices in the context of regional integration. The COMESA Secretariat is in the process of developing a regional competition policy. However, most of the countries in the region including Botswana are either in the process of, or are yet to put in place a framework for a competition regime at the national level. Hence, concerns have been expressed about the effectiveness of a regional competition policy without solid competition framework at national levels which can work as building blocks for a regional competition policy.

Thus there is an urgent need to evolve a competition regime and strengthen competition culture in the region. This can be done through guided research and increased awareness among the stakeholders on that basis. The unique feature of the project is that it has been designed to take a bottoms-up approach, by involving all possible stakeholders in the process.

For this purpose, CUTS decided to work with research and non-governmental organisations, and other stakeholders such as chambers of commerce, government and media in the targeted countries. The project will be carried out under the guidance of a project advisory committee comprising of economists, experts and practitioners.

2. Implementing Organisation:

CUTS Centre for Competition, Investment & Economic Regulation (C-CIER)

3. Participating Countries

The project will be conducted in the following seven countries: Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia and Uganda.

4. Objectives

The following will be the objectives of the project:

- Conduct an evaluation of the competition concerns, including their regional dimensions, facing these countries and the existing architecture for dealing with those concerns by identifying key constraints;
- Develop the capacity of all the stakeholders including the policy makers, regulators, civil society organisations, particularly consumer groups, academics and media persons to understand and appreciate competition concerns from national as well as regional and international perspectives;
- Provide inputs for drafting new legislation or reforming existing legislation, drawing on best practice from other countries;
- Prepare and distribute materials on competition policy & law widely to raise national awareness;
- Identify key stakeholders to form and institutionalise a national reference group in each project country and organise meetings/trainings; and help build constituencies for promoting competition and consumer awareness by actively involving and building capacity of policy makers, civil society organisations, academics and media persons.

National Reference Group Meeting



(Mr. B. J. Mogotsi Programs Manager of BOCONGO welcoming participants)

Mr. B.J. Mogotsi, Programmes Manager of BOCONGO provided the welcome remarks and indicated that all representatives present should use this meeting as a means of working together in giving inputs in strengthening of the competition policy for Botswana. Mr. Mogotsi highlighted the importance of competition policy and walked through the benefits of competition in market. He also pointed out the fact that the government alone can't win the battle alone – Civil Society partnerships need to take place. Mr. Mogotsi reiterated the critical need for everyone to actively participate in the presentations and the discussions to bring out the best results from the meeting.

Mr. Mogotsi presented two documents to the participants. The first one was the Preliminary Draft Report on Competition Issues in Botswana and second one was the Botswana National Competition Policy. Through this meeting he laid the platform for the civil society organizations to respond to the issue. Through the example of “Green Shop” he told that NGOs also need to understand the importance of a Competition policy as it also affects us directly or indirectly.

In his welcome remarks, Mr. Mogotsi gave a brief background of the 7Up3 project and its relevance in Botswana. He also said that the project is supported by CUTS International and BOCONGO and BIDPA are the implementing partners. BOCONGO is doing the advocacy and the lobbying of the project while BIDPA specializes in research and development of the policy issues.

He then invited Mr. Monnane M. Monnane from BIDPA to present the Preliminary Draft Report on Competition Issues in Botswana.

Competition Scenario in Botswana



(Mr. Monnane Monnane presenting on Competition scenario in Botswana)

Mr. Monnane Monnane, the Research Fellow from BIDPA thanked Mr. Mogotsi for inviting him to present in the forum. He then started his presentation by stating the fact that Botswana has no laws in terms of competition. However, the competition policy was passed by the parliament in August 2005.

He said that general public and the civil society in Botswana have little knowledge about the competition issues. He gave a brief background of the study, its objectives, methodology used, study limitations and the analysis of the project.

He then defined some of the key terms used in the competition policy. Mr. Monnane said that the objective of the project is to evaluate the competition concerns and develop the capacity of national stakeholders including the policy makers, regulators, civil society organisations, especially consumer associations and groups, academicians and the media through a participatory process to understand and appreciate the country's prevailing competition concerns.

Mr. Monnane briefed the participants about the methodology employed in the project. He said that the methodology included two main activities, namely, data collection and review of several documents that may shed light on competition issues in Botswana. The study targeted three main categories of respondents, business, government and civil society/consumers.

It was a requirement that 50 – 75 respondents be interviewed, but the study managed to benefit from 48 respondents (16 government, 16 private sector and 16 civil society), which by any standard is a good response rate. The respondents were randomly sampled from Government ministries, the private sector (the Botswana Confederation of Commerce Industry and Manpower members), and civil society (the Botswana Coalition of Non Governmental Organisations members and the general public). He said that the study focused mainly in Gaborone and surrounding areas.

According to him, the study used a combination of both self administered questionnaires and interviewee administered questionnaires with occasional follows ups. Extensive literature was review was undertaken on among others, policies, regulations and laws affecting competition in Botswana as well as previous related studies in Botswana.

However, he cited some limitations of the study, which were mainly due to the financial constraints. The fact that the study focused mainly in Gaborone makes it less representative of the entire country, although there is no immediate reason why perceptions about anticompetitive practices should vary greatly between urban and rural areas.

He also mentioned that due to financial constraints, the questionnaire design did not allow one to adequately measure competition within the market, but was only suited to capturing perceptions about the state of competition in the market. Measuring competition in a given market requires data that would allow the calculation of concentration indices. The questionnaire design did not allow for that.

Mr. Monnane briefed the participants about various policies affecting competition in Botswana, namely Southern African Customs Union (SACU), The World Trade Organisation (WTO) Agreement, Botswana/Zimbabwe Trade Agreement. He also mentioned various Laws and Regulations Affecting Competition in Botswana, mainly The Companies Act, The Industrial Development Act, The Trade and Liquor Act, Public Procurement and Asset Disposal Act, Telecommunications Act, Consumer Protection Act, Botswana Meat Commission Act, Road Transport Permits and Banking Act, 1995 Section 9(5).

He then presented the findings of the survey and the over all competition scenario in Botswana. According to him there is evidence of anticompetitive practices in Botswana and most prevalent of which is Price Fixing. Anticompetitive practices are prevalent in retail, motor trade and construction sectors and there are no compelling reasons to exempt infrastructure at expense of SMMEs.

After his presentation, he opened the floor for questions and comments.

Comments and Questions from the presentation:

Participants raised the following questions and comments:

- ✓ Some participants felt uncomfortable on the fact that there is no government policy in terms of citizen's empowerment so that citizens could be empowered with the knowledge of competition and consume laws. They also shared the same feeling for the fact that there is no policy in terms of Research and Development.
- ✓ The questions were also raised in terms of differentiation of working line between Competition Policy board and Sector Regulatory bodies e.g.: Telecom Regulatory Authority takes care of telecom related issues, so there should be a proper working understanding between the both parties.

Mr. Monnane suggested that there should be a division of expertise between the two bodies. As for example, License issues, issues of rights etc. should be taken care by Sector Regulatory bodies. All the policies related to competition and market regulations should be taken care by the Competition Policy board.

- ✓ The issue of Genetically Modified crops was also raised. In Botswana there is no legislation in terms of this. 30% of maize produced in South Africa is genetically modified and Botswana imports it. The competition policy law should provide measures to safeguard the interests of small farmers.
- ✓ We should also look into ground realities and at the capacity of the citizens. Do they have the capacity to compete with the rest of the world in an open market? E.g. look at EU, along with economic empowerment; they are also building capacity of the people. Therefore we as a country, have to look upon these matters so that we progressively move ahead.
- ✓ A lot of questions were raised on Citizen Preferential Treatment policy of the government. People wanted to know if this is not a violation of the competition laws. In response Mr. Monnane said that we need to put in a lot of thought into this matter. In his views, many times the philosophy of Citizen Preferential Treatment causes more trouble than benefit. That's why he suggested Citizen Partnership instead of preferential treatment.
- ✓ Participants felt that there should also be some claws in the policy which shall protect and safe guard interests of indigenous small scale producers and farmers. There should also be some relaxation for new and upcoming businesses.
- ✓ Corporate Social Responsibility should be an integral part of the policy. In clear terms the corporate sector should be aware of the fact that they have to repay back

the society what they have made from it. Also, civil society is struggling for resources; this would add some sustainability into the system.

- ✓ Participants wanted to know about the issue of dumping of foreign goods in Botswana. They suggested that there should be something included in the policy about this. The issue of natural resource exploitation was also a concern.
- ✓ A participant suggested that the Competition Authority should not be founded by the government. In the era where government practically owns every authority on governance at their discretion, it might not serve the purpose and may not play unbiased role in the implementation. Ministers with practically no technical expertise are given powers to administer important and crucial departments. President has powers to deport anyone, who dares to speak against the government. Is this the right and just democratic society?
- ✓ Questions were also raised on the vehicles coming from east in Botswana market. These vehicles are cheap and are readily available. People go for them as they are cheap and provide value for money. In other hands most of these vehicles are dumped in Botswana, which is not justified as we are being given low quality and outdated products. How would this be covered under competition laws?

Mr. Monnane made it clear that forming a competition policy and making market more competitive should not be mistaken with just opening of the market. In real terms it means regulating the market in a proper and organized manner. He also suggested that the ministers with unchallenged powers should be held accountable and should be questioned and brought to the forums like this and interrogated. Just letting them loose is not good for competitive market.

Some more questions raised by the participants:

- ✓ What sorts of dealings were covered in the research? What standards were taken into place while dealing?
- ✓ How much clarity do people have about the competition issues? Wont the findings would be incorrect as there might be lack of understanding about the issues.
- ✓ Is the policy accepted by the cabinet or the parliament? If yes how did u manage to get hold of the document, as every thing is secretive in this country?
- ✓ Is this policy just for the same of it, or it will actually help the people in Africa and Botswana? How much did it help the people in the first world country?
- ✓ What is a Minor?

- ✓ Since certain industries are reserved for locals, how does it complement the competition policy? And if it is against competition, what about citizen empowerment?

Mr. Monnane responded to the questions. He told that the policy has been passed by the parliament on 5th August, 2005. There will soon be an act on it. But there still are some loopholes in the policy and we as the reference group, have to fix it. That's the reason we are doing this consultation to address the shortcomings of the policy.

He told that he is a pro-citizen, but has a problem with 100% citizen reservation. The problem is from the consumer's point of view. If we reserve everything for citizens, then they should also have the capacity to handle the projects. Like the construction sector, so many projects are just being neglected. In the end the country and the consumer suffers. The individual citizen is empowered, but the country as a whole loses efficiency.

The alternative way would be to design the economic scheme in a better way. There is nothing wrong with having a citizen owned company, partnering with foreign company. That is citizen empowerment through foreign partnership. So we open our markets, but then we make sure that the opening is controlled and the access is only to people who partner with locals and employ them.

In Botswana, anyone less than 21 is a Minor. But he personally feels that the youth under 21 should also be given access to business and funding.

Participants raised some more questions regarding the competition policy:

- ✓ Did we look into Competition Policy in the neighboring countries to take any lesson from it?
- ✓ How will the youth and the people with disabilities be helped with this policy?
- ✓ Where does this policy stand in terms of the skills development of the people?
- ✓ Participants realize that the competition policy is meant to enhance the quality of goods and services and also to give more facilities and options to the consumers. But the citizens of this country are challenged. They lack knowledge about all these developments. Our leaders go to different countries and places and market our country for investments. This gives the foreign investors and companies more idea about our country than locals. So they get an upper edge than we locals. How do you see this policy benefiting the people at the grassroots and insuring it is well intentioned and serves the needs of Botswana.

- ✓ Participants said that they needed to over emphasis the need for local empowerment in the policy. Especially reservations for the locals. The big multinationals come here and take over the small industries owned by Batswana. They even sell small items like fat cakes and firewood which hamper the small business a great deal. The foreign companies make profit and take it to their country. Chinese come here with briefcase and leave with containers. There are Chinese shops in every village now and they are selling goods for cheap. The local industry is suffering great loss because of this.
- ✓ However, one of the participants differed in this view. He said that the market in Botswana is limited, and sooner or later Batswana have to look out for other markets. If we are not prepared to handle foreign companies, how will we be able to survive? Are we so weak and skill less that we can't handle competition head to head? Batswana are strong people and we have to make sure that we transform ourselves in business world as well. It's high time we stop crying like a baby on reservation issues.

How do we expect to empower ourselves if we are not efficient? Sooner or later these barriers will be lifted and if we r not prepared, how will we survive.

The way to go is to create an enabling environment for our SMMES. If Chinese can do that, why cant Batswana do it. It's us who have to make it happen. We have to educate and empower people, not cripple them with reservations and protections.

Mr. Monnane's response to the questions:

- ✓ SA and Zambia are doing well in terms of competition policy. SA has been really active with the policy implementation. This is basically because of the public awareness about the policy. We should have more of such forums to generate public awareness about the policy, also broaden the target group of the participants.
- ✓ The policy has provisions to public education and also caters for youth and people with disabilities. Though there are no exemptions for the businesses run by people with disabilities. But we can lobby to include that. Policy is just a framework, it's us who have to play around with it and make it more effective.
- ✓ Through the policy the practice of price fixing will not be there anymore. The cost of the product or service will determine the price, not the competition in the market.
- ✓ However there are no exemptions for SMMES, but we have to lobby for that. About the reservation issue, every Batswana wants to see Botswana developed. The intentions are good, all we need to do is to take advantage of the available

structures and move ahead. We should ensure that we as a nation are placed well to face the challenges when the trade barriers are lifted.

- ✓ Let's see the market structure. There are two citizen entities in the market. One is the Business person, and other the consumer. Now, through the reservation policy, the business person is benefited, but since there are no proper competition laws and structures in place, and also there is lack of service delivery and quality, the consumers are forced to buy the low quality goods for the higher price. So when they see a cheaper option in terms of Chinese goods, they go for it.
- ✓ As much as we advocate for reservation, we must also make sure that we also take care of the consumers.

Recommendations and the way forward

1. Participants came to a conclusion that the poverty in Botswana is growing. There is no government policy with a human face. There is a tendency to forget the realities and make superficial assumptions. 70% of Botswana's population is involved in the agricultural sector. Yet, there is not a single product that can be called Proudly Botswana. Therefore there must be something seriously done to BRAND BOTSWANA.
2. Participants also suggested BOCONGO to present a Position Paper on Opening of economy for the foreigners.
3. Suggestions were also made to involve Botswana Bureau of Standards, BOCCIM and University of Botswana in the forum.
4. It was suggested for BOCONGO to organize another reference group meeting to discuss the comments and the feed back on this policy.

After the discussion, Mr. Mogotsi thanked the participants and informed that more people will be brought on board like Trade Unions, Politicians, Cabinet Ministers and more civil society organizations. BOCONGO wants to get everyone on board so that it can make the maximum impact.

Mr. Maphanyane from MISA Botswana thanked the participants, CUTS and BOCONGO for providing this opportunity to form Botswana Competition Policy. He requested the participants to continue with the thinking process and come up with a policy which is just, fruitful and productive to all stakeholders. He also thanked Mr. Monnane Monane of BIDPA for sharing his research on Competition scenario in Botswana. In the end he laid emphasis on the fact that we can drive growth and results if we put all the stakeholders on board and move together for a common cause.

Snapshots



(Session Chairperson: Mr. B.Mogotsi)



(Participants during the meeting)

