

PROJECT CONCEPT

Title of the Project

7-Up3: Capacity-building on Competition Policy in Select Countries of Eastern and Southern Africa.¹

Project Summary:

CUTS' 7-Up project, a research and advocacy project on competition regimes in seven developing countries that concluded in 2003 has been very successful in raising awareness and stimulating debate on these 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 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 will 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.

Implementing Organisation:

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1. Background

¹ The project will be conducted in the following seven countries: Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia and Uganda.

1.1 Competition policy and law have been a little known area in most developing countries. However, the 7-Up Project implemented by CUTS in 2000-2002 has made a significant change, especially in the selected countries. The project involved a comparative study of the competition regimes of seven developing countries. The countries selected for the project were: India, Kenya, Pakistan, South Africa, Sri Lanka, Tanzania and Zambia. The project was launched on September 1, 2000 and formally concluded in January 2003.

1.2 An interesting aspect of this growing awareness is that, it is not limited to the project countries. *It had, and continues to have, spillover effects in other developing countries in all continents of the world. Moreover, the project is now considered a path-breaking study in the developing world.* Hence, CUTS has been receiving queries from different places on competition issues in the context of developing countries. Obviously, a need was felt in several other countries and by different stakeholders to take up similar activities. Consequently, CUTS has taken up a project in selected Asian Countries, titled 7-Up2 Project: Vietnam, Cambodia, Laos, Bangladesh, Nepal and India.

1.3 It was in this context, there has been a demand from many other countries, especially from the Southern and Eastern Africa region that some sort of replication of the 7-Up project is undertaken in other countries as well. This proposal is a fall out of such articulations. These demands have been made both orally and through letters.

2. The Regional Context

2.1. Countries in the region vary widely in terms of their size and economic characteristics. They include middle-income countries, developing and least developed countries. Most are members of the WTO, while Seychelles and Swaziland are applicants and the Comoros, Ethiopia and Eritrea are not. Three regional integration arrangements are simultaneously operating in the region with considerable geographical overlap among them.

2.2 The treaty establishing COMESA was signed at Kampala, Uganda on November 5, 1993 by 19 African states. Currently, there are 20 members.² Its aim is to increase social and economic cooperation between the countries of East and Southern Africa and ultimately creating an economic community. Its immediate priority is to promote 'outward-oriented' regional integration through trade and investment. This includes the establishment of a FTA, leading to the creation of a customs union. Not all COMESA countries are part of the FTA. Currently, the FTA participants are Djibouti, Egypt, Kenya, Madagascar, Malawi, Mauritius, Swaziland, Zambia and Zimbabwe.

2.3 The Heads of State of the Republics of Kenya, Uganda and the United Republic of Tanzania met in Arusha on 30th November 1999 and signed the Treaty for the Establishment of the East African Community. The three EAC countries share a common history, language, culture and infrastructure and are credited with one of the longest experiences in regional integration.

² The following are the COMESA countries: Angola, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia (has notified to leave), Rwanda, Seychelles, Swaziland, Uganda, Zambia, Zimbabwe.

2.4 Southern African Development Community (SADC) is a regional organization of 14 southern African countries.³ The SADC has succeeded the Southern African Development Co-ordination Conference, which was formed in 1980. The regional heads of state signed a declaration and treaty establishing the SADC in Windhoek, Namibia, in 1992. Among the 14 SADC countries, the five southern most countries, Botswana, Lesotho, Namibia, South Africa and Swaziland are more integrated as they are part of the Southern African Customs Union (SACU). Interestingly, the performance of all the SACU members, especially the smaller ones, has been spectacular compared to other SADC members. This is very often attributed to greater regional integration.

2.5 Of the 20 COMESA countries, only four have, so far, adopted a competition law: Malawi, Zambia, Kenya and Zimbabwe. Other countries, like Egypt, Mauritius and Uganda are currently in the process of adopting a competition law. Among the EAC countries, Kenya has quite a long history of a competition law while Tanzania has adopted it recently and Uganda is in the process. Among the SADC's 14 member countries, six have a competition law: Malawi, Namibia, South Africa, Tanzania, Zambia and Zimbabwe. Some are of course in the process of adopting a competition law.

2.6 One of the objectives behind the formation of all of these regional arrangements was to enhance cooperation in the creation of an enabling environment for foreign, regional and domestic investments. However, it has been recognised that a lack of competition in domestic markets and at the regional level not only discourages the entry of new investors but may also reduce the positive impact of foreign direct investment onto the economy.

2.7 Thus, as part of the regional integration effort mandated in its treaty, the COMESA Secretariat is developing a regional competition policy. The aim of the policy is to ensure that transparency and fairness exists among the economic actors in the region. The regional competition policy is intended to harmonise existing national competition policies and build a coherent regional economic environment.

2.8 The EAC too has a mandate to develop a regional competition policy as well as harmonise national competition rules. However, there has not been much progress in this regard so far. The SADC protocol on trade covers competition policy as well and exhorts member states 'to implement measures within the community and prohibit unfair business practices and promote competition'. Thus there is sufficient ground for SADC to go in for a regional competition policy and/or harmonised national competition rules. It is however not clear if it has made any progress in this regard in recent times.

2.9 However, it may be expected that if the COMESA is on its way to a regional competition framework and harmonised national competition rules, the other bodies, EAC and SADC, may follow the suit. Since there is considerable geographical overlap among these three regional groupings, conflicts are bound to arise in the process of competition policy making both at regional and at national level. For example, Uganda, which is a member of both EAC and COMESA, will face much confusion while harmonising its competition rules with both EAC and COMESA, if their own regional competition rules themselves are not harmonised.

³ At present its 14 member states are Angola, Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.

2.10 Hence it would be important to understand what kind of relation and responsibilities should be shared between the regional body in one hand and the national competition authorities on the other, within an integrated regional framework. It would also be interesting to study what kind of problems the geographical overlap can create and what solutions can be envisaged in the context of each of the regional bodies taking a regional approach to competition policy.

3. Project Outline

3.1. The purpose of the project would be to build capacity in select countries of Eastern and Southern Africa to assist them in formulating, implementing and/or enforcing competition policy and law at the national, regional and international levels. In order to design and implement an effective and appropriate competition policy, participation by stakeholders is crucial. The first step is to conduct research on the prevalence of anti-competitive practices and their ill effects, especially on the consumers. The research itself should involve all the stakeholders and this would not only raise awareness and then stimulate discussion and debate among different stakeholders but also produce better research output.

3.2 There have been some efforts to engage policy-makers, bureaucrats and business in debates on competition law and policy, with almost total absence of involvement of civil society representatives and media persons. CUTS' 7-Up project has been the first such effort at involving civil society representatives, academics and media, along with government officials and business, on issues of competition law and policy.

3.3. However, as mentioned above, the 7-Up project was restricted to only four countries in the region, out of which two are members of COMESA, two are members of SADC and two are members of EAC. This project aims to do research, advocacy and outreach in a select group of seven countries in the region. However, outreach of the project will be beyond the seven selected countries and will cover the entire Eastern and Southern Africa region. The essential difference of the proposed project from similar other projects in the region, is that it will adopt a multi-stakeholder approach.

3.4. The project will be implemented with the following goals:

- ◆ Build capacity on competition issues in select countries for the purposes of national, regional and international level policymaking; and
- ◆ Raise awareness and stimulate discussion and debate on competition issues among different stakeholders

3.5. 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.

3.6. The project will be conducted in the following countries: Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia and Uganda. The project will be regional in outlook and networking and dissemination activities will be pursued actively across the region as a whole.

4. Project Activities

4.1. Research

4.1.1. Field research would be carried out in each country to identify the macroeconomic and institutional context of competition and particular concerns and issues that arise. Every country has different competition concerns that will determine the nature of competition policy and law that is appropriate. This research phase of the project is therefore crucial to the capacity-building work in the later phases of the project.

4.1.2. The research will cover the following areas:

- Characteristics of the macro economy (size and structure of the economy, trade, financial sector etc.);
- Government policy (internal and external liberalisation, privatisation and national ownership, regulatory policies, consumer policy etc.);
- Investigation of existing competition abuses and distortions at all levels; and
- Identification of cross-sectional perceptions on competition concerns.

4.1.3. The objective of the research will be to collect information on market players and sources of non-competition in several markets (e.g. rivalry and pricing policies, and structural and behavioural impediments to competition). Effort will be made to develop indicators that are traditionally used in the literature to capture market power such as levels of market concentration, price mark-ups etc. This output will be complemented by a review of existing legal and institutional framework to foster competition, including consumer protection, dispute settlement system etc.

4.1.4. Competition concerns will be identified through a structured questionnaire which will be distributed to key individuals in government, business, civil society, especially consumer groups and business associations, lawyers working in the field, quasi-governmental bodies e.g. regulators, public utility heads, competition authorities etc. This will be followed up by interviews with some of the respondents. The questionnaire will ask respondents to identify cases of suspected cartels and abuse of dominance such as excessive pricing, refusal to deal or supply etc. Concerns are expected to emerge at the national, regional and international levels.

4.2. Dialogues & Seminars

4.2.1. On the basis of the research outlined above, advocacy documents will be prepared. This publication will be a reader-friendly exposition of competition issues and policies using the cases identified in key economic sectors as illustrations. The document will be distributed widely and used to focus discussions within the national reference groups.

4.2.2. In each country, key stakeholders from civil society organisations, media, academia, government, business will be identified to form a national reference group. A discussion seminar will be held in each country at which the research results will be presented and debated. This will be followed by a regional seminar at which a broad group of stakeholders will be able to share their experiences and begin to develop a regional policy that can address cross-border concerns.

4.2.3. In all the meetings, particular emphasis will be given to involving consumer groups, where these exist, and media. Consumer concerns will be highlighted in all the dissemination materials and national consumer groups will be encouraged to use these to extend their own capacity. Countries with active consumer groups will be linked up with organisations in countries where the consumer movement is not so developed and the creation of a regional network of such groups will be encouraged. In countries without an active consumer movement, other NGOs will be encouraged and assisted in adding consumer issues to their agenda.

4.2.4. In order to strengthen policy design and implementation, three training seminars will be held for a select group of target audience, i.e. civil society representatives (mainly consumer groups), academics and media persons. Experts will share international best practice in competition policy & law with the participants and distribute structured training materials. Each seminar will have a different focus and a different target group.

4.2.5. These training seminars will focus on the following issues:

- *Domestic competition policy*: will cover issues affecting the initial design of a competition law & policy.
- *Competition and consumer law*: will focus on raising awareness and capacity with respect to competition and consumer laws and their implementation.
- *International competition policy*: focusing on issues relating to international and regional dimensions concerning competition policy & law.

4.3. Advocacy

On the basis of the research and the discussion seminar outputs at the national and regional levels, a series of policy recommendations will be identified for each country tailored to their particular concerns. Regional level output will be fed into the ongoing work at COMESA, SADC and EAC to develop a regional competition policy. Another key output will be negotiating strategies for the countries individually and as members of a regional agreement for multilateral negotiations on these issues.

4.4. Information Dissemination

Two newsletters are proposed to be brought out under the project. One will be a hard copy while the second will be a soft copy to be sent out to interested persons through email. Additionally, a separate section on the project will be opened up at the web site of

CUTS, which will be linked up to several search engines so that persons interested in competition issues will be able to read about the project on a regular basis. These efforts are in addition to the reports that the project will produce.

5. Project Management

5.1. Advisers

The project will be guided by an international advisory committee comprising of experts in the field: economists, lawyers and practitioners and representatives of donors and inter-governmental organisations. The consultation will be done through e-mail and at meetings where the committee members can be invited. In addition, close coordination will be maintained with United Nations Conference on Trade and Development (UNCTAD), World Bank, World Trade Organisation (WTO), European Commission and such other agencies.

5.2. Research and Coordination Staff

CUTS proposes to implement the project in collaboration with its Africa Resource Centres in Lusaka, Zambia and Nairobi, Kenya. Both these offices will be adequately strengthened to take up the responsibilities. The Project management team will include a project coordinator and two project assistants. They will be supported by the regular staff of CUTS both at a junior and the peer level. In addition, consultants would be engaged to work on the project or parts of it, where it is necessary to engage them for expediency and efficiency.

5.3. Partner Institutions

There will be one partner institution (research institute, university department or NGO) in each of the seven countries. Consumer organisations (wherever they exist) and other advocacy groups will also be involved in the project for carrying out advocacy activities. All the partner institutions will be required to nominate a contact person who will be expected to carry out/supervise the local studies and feed the same into the larger project.

6. Timeframe

The project will be conducted over the course of twenty four months.