

# **Strengthening Constituencies for Effective Competition Regimes in Select West African countries (7Up4 Project)**

**Interim Review Meeting  
July 29-30, 2009**

## **REPORT OF PROCEEDINGS**

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### **I. Background**

CUTS International, in partnership with Pro Poor Advocacy Group (Pro-PAG), The Gambia and the Gambia Competition Commission hosted a two day event, serving as an interim review meeting of the ongoing two year project entitled ‘*Strengthening Constituencies for Effective Competition Regimes in Select West African Countries*’, referred to as the 7Up4 Project on in The Gambia, on July 29-30 2009. The 7Up4 project ([www.cuts-ccier.org/7Up4](http://www.cuts-ccier.org/7Up4)) is being implemented by CUTS Centre for Competition, Investment & Economic Regulation (CUTS CCIER) with support from the Department for International Development (DFID), UK; International Development Research Centre (IDRC), Canada; and the Ministry for Foreign Affairs, Sweden in seven countries of West Africa, namely – Burkina Faso, The Gambia, Ghana, Mali, Nigeria, Senegal and Togo.

The major objective of the project is to develop the capacity of national stakeholders including policy makers, regulators, civil society organisations (CSOs), particularly consumer groups, academics and media persons in the select countries to bring the debate on the need for an effective competition regime into the wider public domain. The project intends to achieve this through research aimed at identifying the various challenges to effective competition regimes. The project intends to evaluate impediments to evolving national competition regimes and identify the best way for addressing such impediments through a participatory process involving multiple stakeholders. It also seeks to provide inputs into the process of drafting new competition legislation or reforming existing competition legislation, drawing on best practice from other developing/least developed and developed countries.

The interim review meeting was conducted to take stock of the project progress, at the end of the first year and identify shortcomings that would need to be addressed. In terms of the project schedule, the first year of the project is largely concentrated on research activities; hence project partners were expected to showcase the research outputs and raise issues relevant for advocacy herein.

## II. Proceedings

*Day 1: July 29, 2009*

### 1. Inaugural Session

Acting Director of Pro-PAG, John Njie set the ball rolling with a speech to welcome the participants to The Gambia and wished them a fruitful discussion. Njie also provided a brief introduction to the 7Up4 project and delved on the fact of how the relationship between Pro-PAG and CUTS has emerged over the last few years. Pradeep S Mehta of CUTS International, the next speaker gave an introduction to CUTS and its work on competition policy and law, globally. He also described the '7Up model' in brief (an approach that has been used in this project) – a research based advocacy and capacity building approach aimed at bringing together national stakeholders for discussions on competition law and policy. 7Up was introduced by CUTS into the international competition community in the year 2000 through a first of its kind project undertaken in 7 Commonwealth countries of Africa and Asia. 7Up1, 7Up2 and 7Up3 have covered 19 countries in Africa and Asia among them. He also explained how the model has received recognition from international organisations such as International Competition Network (ICN), United Nations Conference on Trade and Development (UNCTAD) and Organisation for Economic Cooperation and Development (OECD). He ended by reminding the participants of the purpose of this meeting.

In his opening remarks, Frederic Jenny (Judge, *Cour de Cassation* of France), a renowned international expert on competition issues and the Chair of OECD's Competition Committee familiarised the audience with various incidences of anti-competitive practices in Africa, and highlighted how important it is for countries to curb such practices through a well-functioning competition authority. He explained the relationship between competition and poverty; particularly how elements of competition policy are useful for trade expansion, increased gross domestic product (GDP) growth and poverty elimination. He also chronicled how poor consumers were often the prime targets of anti-competitive practices, particularly in the context of Africa where industries such as the soft drinks, health, beer, retail trade, education, transport, bread etc. were all prone to cartelisation and collusive behaviour. The same is particularly true for fuel, fertiliser, transport and cement sectors of which examples were cited.

The Minister of Finance and Economic Affairs (also overseeing Trade, Industry and Employment) in the Gambia, Honourable Abdou Kolley officially inaugurated the conference. In his statement, the Minister showed his appreciation for the project and pointed out how they recalled the first National Reference Group (NRG) meeting in September 2008, a process through which the government continues to support the project. He also articulated how competition reforms would be expected to complement the liberalisation measures already undertaken in The Gambia. The Minister pointed out the challenges faced by the country of implementing its competition law, given that it has just recently been passed and that the Gambia Competition Commission (GCC) has recently been established. He highlighted the need for awareness generation and advocacy in the country to promote a competition culture and also to build a robust institution to right market malpractices and promote competition.

## **2. First Session: Contribution of Competition to Growth and Poverty Reduction**

The first technical session was a panel discussion on *Contribution of Competition to Growth and Poverty Reduction*. The panel comprised of Peter D'Souza (DFID, UK); Dr Seydou Sakho (ECOWAS Secretariat, Nigeria); George Lipimile (UNCTAD, Switzerland) and Frederic Jenny (OECD, Paris). Pradeep S Mehta (CUTS, India) was the moderator.

Peter D'Souza started by defining the meaning of competition, especially from the perspective of a level playing field and free entry and exit, before outlining the essential basic premises for competitive markets to contribute to private sector development and growth. He also emphasised how effects of the economic downturn are worsened by anti-competitive practices. He chose the financial sector to underline how failures in banking have much wider ramifications and dire impacts on the economy than failures in other sectors, e.g. food. In conclusion, he introduced the concept of Competition Assessment Framework (CAF) developed by DFID, UK – as a tool that can assist governments and other stakeholders to assess the level of competition in a particular sector and help make amends to enhance the level of competition in those sectors.

Dr Sacko Seydou, from the Economic Community Of West African States (ECOWAS) Secretariat explained how ECOWAS worked with individual countries, and why it was important for a competition framework for ECOWAS to be in place before trade negotiations. He explained the progress that ECOWAS has made on regional competition law and welcomed CUTS' initiative and interest to work with ECOWAS on competition issues. He presented an overview of the phases that ECOWAS economies have passed through – agriculture development during the 1960s, development of the industrial sector and the setting up of industries during the 1970s, mostly being state owned; the realisation of failing industries in the 1980s followed by liberalisation under structural adjustment programmes (SAPs) thereafter. The focus is now regional frameworks under liberalisation to promote integration, where regulation is important. He pointed out that some countries under ECOWAS do not have competition laws, and that ECOWAS was evolving a regional competition policy that would guide countries and motivate them to develop and strengthen their national competition regimes. He pointed out the need for capacity building and complemented CUTS for the 7Up4 project that aims to enhance capacity of various stakeholders on competition. He asserted that enforcement is more important than mere enactment of laws.

George Lipimile representing UNCTAD, Switzerland pointed out how important it is to have a definition of poverty in order to assess how competition can contribute to poverty reduction. He gave a working definition of poverty, and explained how competition policy can contribute to its elimination. Using practical examples from the intervention of the Zimbabwe competition authority, he demonstrated how merger and acquisitions (M&As) decisions directly contributed to poverty reduction. He also used some practical examples from Zambia, where he also outlined how the competition authority had made several interventions using the competition law and the interventions had resulted in a lot of benefits which directly relate to poverty reduction and growth.

The final speaker for the session was Frederic Jenny, who talked about competition issues under the economic recession and how competition policy and law remain relevant, in the current

economic environment. He talked about diverging views on whether competition policy should remain a priority, and how the effects of the recession would also be felt in Africa even though indirectly. Selective assistance that has been offered as a solution in some countries tends to be against competition. Examples include the support for automobile industry in France, which could only be given to firms keeping the investment in France. Other state support measures to support failing companies were also not extended to competitors, which may result in an uneven play field. He also pointed out how the failing firm doctrine may result in condoning of some anticompetitive practices for firms affected by the recession. In conclusion, Jenny pointed out that the crisis has only modified the way in which competition authorities may approach anticompetitive practices but it is still possible for support measures to have solutions compatible with the need to maintain competition.

There were also some floor discussions and contributions. The Minister opined that how the challenge in taking decisions which may be politically and economically correct, but with unforeseen implications on competition can be resolved. He also pointed out how the stimulus packages in developed countries tilt the trade balance further in their favour and result in unfair competition which may warrant equal support in developing countries. Some other remarks related to the impact of competition in lowering prices, especially in countries with high production costs. There was also some discussion on the need to resolve the difficulties currently being experienced between the enforcement of the West African Economic and Monetary Union (UEMOA) community competition law and national competition authorities.

## ***2. Second Session: State of Competition in West African Countries***

The second session, entitled *State of Competition in West African Project Countries* was intended for the project country researchers to showcase some of the interim findings of the projects, especially regarding the nature of competition reforms in the countries.

**Burkina Faso**, represented by Dr Noel Thiombiano of *Centre d'étude de documentation et de recherche économiques et sociales* (CEDRES) spoke first. Dr Thiombiano pointed out that Burkina Faso has an active competition law, enacted in 1994 and reviewed in 2001. The law is enforced by a national competition authority as well as a regional body, UEMOA. Moreover, sectoral regulations such as National Telecom Authority also have a bearing on competition enforcement. Consumer protection agencies are also linked up with competition law, and the Association of Consumers of Burkina Faso is an example. Some results of the perception survey, carried out as part of the research activities were also presented. The results show that respondents generally perceive anti-competitive practices to be prevalent in all regions of the country. Price fixing was considered the most prevalent. A huge number of respondents are not aware of the existence of competition law, while business perceives the level of competition to be high. Some concluding remarks were on the need to sensitise people on competition law issues as well as the need for international cooperation for handling cross border cases.

A representative of Pro-PAG, Omar Jobe presented the results for **Gambia**. He outlined the general country background information, the socio and economic policies affecting competition and measures already undertaken to enhance competition, which include the enactment of a

competition law and establishment of a competition authority (Gambia Competition Commission). He also presented the methodology as well as the results of the perception survey, undertaken as part of the research activities under the project. It was reported that awareness about the existence of competition remains quite low, as only 35 percent of the respondents reported that they were aware of the competition law in Gambia. Generally, anti-competitive practices are perceived to be frequent, although the majority of respondents from the business sector (63 percent) believe that competition is very high in the economy. Respondents also believe that the media's understanding of competition issues is very limited, hence low awareness generation. In conclusion, Omar Jobe outlined some suggested way forward, which includes the enhancement of political will to implement more competition reforms and awareness generation in response to the absence of civil society organisations with knowledge of competition issues.

Aladjou Tamou Agouta, of *Association Togolaise des Consommateurs*, (ATC) of **Togo** spoke next. He reported that Togo was a little behind in terms of the research, given that they were still collecting the results of the perception survey, which he regretted not being able to present. He, however, gave the general findings from the other areas of the research undertaken in the country. Of particular concern were monopoly situations in Togo, particularly in energy, mines and telephone sectors, which include state owned monopolies. Sector specific regulations also exist, which have a huge bearing on competition, e.g. the electricity regulator also regulates competitive bidding in the sector. Togo has a competition authority, set up three years ago but finding it difficult to take off. As a result, consumers are still to benefit from the already undertaken competition reforms, and achieving consumer welfare is still a challenge. Lack of competition in the domestic cement market is a worrying fact, particularly given the existence of domestic companies such as *Société des Ciments du Togo* (CIMTOGO), Fortier and West African Cement Company (WACEM) which prefer to serve foreign markets. The same situation is present in the mobile sector, where two operators Togocel and Moov exist but are not competing in terms of pricing. In conclusion, he pointed out that it is their hope that this project will leave ATC in a better position to conduct advocacy activities that would result in competition reforms in Togo.

Several issues were raised during the floor discussions. It was pointed out that the manner in which the perception survey was conducted had some weaknesses, especially regarding the sampling methods, which were not uniform across countries. It was also pointed out that by law the newly introduced Gambia Competition Commission is excluded from handling competition issues regulated under the Public Utilities Regulatory Authority (viz., telecom, water and electricity). A cause of concern was that laws were in place in many countries, but how can the government be motivated to operationalise the process of implementation of the law – such that consumers are benefited. It was observed that often the perception to competition reforms in quite narrow; so there is a need to develop a more holistic understanding of the environment in which a competition legislation/authority has to function, so that there is a more comprehensive push for competition reforms.

### **3. Third & Fourth Sessions: State of Competition in West African Countries**

The third and fourth sessions were continuation of the previous one entitled *State of Competition in West African Project Countries* intended for the project country researchers to showcase some of the interim findings of the projects, especially regarding the nature of competition reforms in the countries.

The first speaker was Oumar Idriss Berthe from **Mali**. He indicated that the perception survey is still to be completed and focused on the general findings from the other areas of research. Mali has a competition law since 1992, and *Direction Nationale du Commerce et de la Concurrence* (DNCC) was established in 1998. In addition to the national competition authority, UEMOA also handles competition in Mali. UEMOA has a broad range of powers, including fines, which DNCC does not possess. About 95 percent of the issues handled by DNCC are related to unfair trade practices e.g. there were 120 cases in 2006-08 while there was one case each year on restrictive business practices in 2007 and 2008. However, in the food sector (sugar, milk, rice, flour, oil) suspected anti-competitive practices (agreement or abuse of dominant position) are regular, and the same is true in the awarding of contracts, as some evidence of bid-rigging are often noted. The large informal sector (65 percent of GDP) is seen as the consequence of the existence of costly or restrictive behaviour that erect barriers to entry into formal markets. Challenges in competition administration include lack of political will, absence of a proper framework for the relationship between DNCC and sector regulators, on one hand, and DNCC and UEMOA, on the other.

Leonard Ugbajah of Consumer Empowerment Organisation of Nigeria (CEON), presented the findings with respect to **Nigeria**. He outlined the general background information on government policies that impinge on competition and commented on the progress made in competition reforms in Nigeria. Nigeria is yet to have a competition law, despite significant liberalisation reforms that have been made to date. Efforts at having competition laws include many different Competition Bills to date, prepared by different bodies, but never passed in Parliament into Acts. Bills were prepared in 2000, 2001, 2004 and 2006 that were all rejected by the National Assembly. Recently another Competition Bill was introduced in April 2009, but there is no evidence that efforts have been made to address the likely concerns to be raised by the National Assembly, and moreover it also has weaknesses that are likely to result in it being rejected again. The biggest challenge to competition reforms is the lack of political will by the National Assembly, in addition to the general lack of awareness of competition issues among the key stakeholders. Results of the perception survey were also presented, which also display a general lack of awareness of competition laws, perceived high level of anticompetitive practices and the belief that the general level of competition is low, a view which is not shared by the business sector respondents.

Mbissane NGOM of *Consortium pour la Recherche Économique et Sociale* (CRES), **Senegal** was the next speaker. He started by outlining the objectives of the project in Senegal, its methodology as well as a summary of the preliminary findings. Senegal enacted a competition law in 1994. Certain challenges to competition enforcement exist in Senegal, probably one of the most significant is the lack of resource allocated by the government to implement the competition law in the country. Sector regulators such as *Agence de Régulation des*

*Télécommunications et des Postes (ARPT), Agence de Régulation des Marchés Publics (ARMP), CRSE, National Administrative Reform Commission (CNRA), etc.* were required to consult the competition authority on matters relating to competition in their sectors. Perception survey results reveal that generally the level of competition is perceived as moderate, with business perceiving that the level of competition has a moderate or no impact on the lives of consumers. In Senegal, the water (SDE) and electricity (SENELEC) sectors are monopolies, with the desire to ensure that every Senegalese has easy access to affordable water and electricity in poor being the justification. However, little consideration is taken for consumers when it comes to pricing. In conclusion, the need for a competition culture in Senegal was highlighted.

The last speaker was from **Ghana**. Charles Ackah of Institute of Statistical, Social and Economic Research (ISSER) outlined the project findings to date. After outlining the general policies and institutions that have an impact on competition, it was pointed out that Ghana is yet to enact a competition law. However, the economy has been opened up to competition through the process of privatisation and liberalisation. The telecom (mobile) and the banking sector were provided as examples of sectors where a fair deal of competition exists. Some few examples of anticompetitive practices (allegations) were given, including collusion and cartels in the food and rough diamond sectors. The perception survey results were also presented. The majority of the respondents are of the opinion that the level of competition in Ghana is moderate and that the impact of anti-competitive practices on consumers is high. The majority of the respondents had no knowledge of competition issues and are of the opinion that competition issues are not well understood in Ghana. There is also a general opinion that government should play a key role in ensuring the setting up of a competition authority to protect consumers.

Floor discussion followed, where it was pointed out that the uniform sample size across countries used in the perception survey might not mean much for a country like Nigeria with such a large population size, which is about 100 times that of The Gambia. It was also mentioned that if a similar perception survey had been done before the project, then this perception results would be more useful in making comparisons and analysing the impact of the project. A question was also raised as to whether records of the participants were kept so that the same people can be interviewed again at a later stage to assess the changes due to the project. A point was raised about the focus of the papers on the electricity sector, and exclusion of other sectors in the energy market, especially oil and gas, where an assessment of competition could be undertaken. It was asserted by some participants that there is a need for evolving clear demarcation of role and responsibilities between the competition and the sectoral regulator – matters related to competition regulation should be handled exclusively by the competition agencies whereas matters pertaining to technical regulation can be left to the sector regulators.

Judging from the experience of countries like Nigeria, it was observed that the process of privatisation has probably not yielded expected results due to the absence of a competition legislation and an authority to enforce the same. A general comment was made for CUTS and the partners to think about specific ‘goals’ to be achieved in the project countries from the advocacy activities that would follow the research phase. It was suggested that CUTS and the partners should undertake a thorough assessment of the current level of interaction between the national and regional competition authorities (especially WAEMU) in the region.

*Day 2: July 30, 2009*

***4. Fifth Session: Political Economy Constraints in Implementing Competition Regimes in Developing Countries***

Pradeep Mehta of CUTS International was the first speaker and highlighted some of the issues in the realm of political-economy that makes implementation of competition laws difficult, especially in the context of developing countries. This includes constraints that frustrate the adoption and implementation of competition and regulatory regimes such as lack of political will, conflicting objectives of stakeholders and barriers posed by vested interests. It is, therefore, important for measures to create a culture of competition before competition reforms are initiated. He opined that it is also crucial to better understand the nexus among regulation, politics and markets in an economy passing through a phase of economic and regulatory reforms. Customisation of competition laws is also necessary rather than blind imitation of laws from other jurisdictions. As a tool to assess the success of the reforms process, it is critical to judge level of consumer empowerment and achievement of consumer welfare from the reforms process.

Maher M Dabbah, of the Interdisciplinary Centre for Competition Law and Policy (ICC), London was the next speaker. He pointed out the unique circumstances of developing countries in terms of political, economic, social and cultural aspects that result in constraints in competition implementation. Such constraints include political constraints; influence of foreign countries and firms; the role of the government in the economy and lack of awareness of the concept of competition and its importance. Political constraints include ideological disagreements likely to arise among policymakers and difficulties in achieving political compromises and consensuses. Heavy government involvement in the economic activities is problematic, as there is scope for the government to participate in anticompetitive practices while exempt from the law. Lack of sufficient awareness of competition issues may result in policies undermining private forces deliberately to ensure superiority of public sector, which would hamper competition.

Several comments were made from the floor. It was pointed out that the Gambia situation require attention, given the exclusion of the competition authority from dealing with the utilities sector, especially given that Public Utilities Regulatory Authority Act (PURA) does not give adequate attention to competition regulation. It was also pointed out that the competition authority can not act independently of the state when it is 100 percent funded by the government and members are appointed by government, as in Burkina Faso. Difficulties to deal with public interest issues were also highlighted; and it was recommended that 'public interest' should be properly defined in a law to avoid confusion and enhance efficiency in competition enforcement.

***5. Sixth Session: Competition Issues in the Agriculture sector***

The final technical session was on *Competition Issues in the Agriculture Sector*. The first speaker, Cornelius Dube of CUTS focused on competition issues in the crop produce market, where he examined some common issues through the value chain analysis; during the input supply stage, crop production stage and at marketing. Anti-competitive practices at the input

supply stage have multiplier effects in the downstream; hence it is important that anticompetitive behaviour be controlled. Examples include exploitative monopolistic practices such as excessive pricing, unfair buying conditions and unfair use of power stemming from intellectual property right (IPR). Government induced measures like price controls and poorly designed subsidy programmes may result in anti-competitive outcomes. There are generally few competition concerns at the production stage, only arising if producers have market power. This would be in instances where crop production is dominated by huge firms/associations. Companies initiating contract farming/controlling vertically integrated processes have also been engaged in anticompetitive behaviour. The marketing stage is also important as it determines profits, hence anti-competitive practices against farmers reduces profit margins, thereby re-investment opportunities and hence future output. Such concerns can be looked at from three levels: those being a result of powerful middlemen who have managed to organise themselves into cartels and hence now have monopsony in buying from farmers and monopoly in selling to retailers; anti-competitive practices by monopsonies who abuse their monopsony against farmers; and government controlled monopsonies with no capacity to pay timely and competitively to farmers yet they are legally the sole buyers.

In conclusion, it was pointed out that all anti-competitive behaviours can be controlled through effective implementation of competition laws while advocacy is needed to make government policies in the sector, competitive.

Alhaji Tamu Njie, Chairperson of Gambia Competition Commission was the next speaker. He focused on the Gambian agriculture sector, where groundnuts are one of the main cash crops. The input sectors are dominated by government enterprises as attempts made to attract private participation in the marketing of agricultural production inputs have not been wholly successful. Government intervention in the import and distribution of seeds, fertilisers and animal traction equipment has also stunted initial private sector efforts to be involved in this area. Groundnut marketing (buying) is dominated by licensed buying agents and the Federation of Agricultural Cooperative Societies. Farm gate prices are determined by a committee with farmers (producers) often having little or no influence on the price set at farm gate level. Gambia Groundnut Corporation (GGC) has virtual monopoly over groundnut processing facilities and is also the sole exporter of groundnuts, and there is no political will for government to dissociate itself from playing such a direct role in the groundnut (or any other agriculture produce market). The licensing policies also need to be revisited in order to open the industry to all who may wish to participate rather than a few who may not have the required capital to operate profitably.

Comments were also made from the floor, where it was pointed out that the middlemen issue is also a serious concern in Ghana. In Nigeria, there is lack of emphasis on competition in the existing agriculture policies, while government is also actively involved in the cotton market in Togo, being both a buyer and seller itself. It was clearly pointed out that the state of competition in the banking, transport and telecom sectors also influenced the nature of competition in the agriculture sector as farmers depended considerably on these sectors.

## **6. Closing Session**

Speakers in the closing session included Frederic Jenny, who pointed out the need to take the lessons from the conference forward in the project countries. It is important to keep in mind that there is always a risk involved when talking about competition, as politicians may not listen even if we know that we are right. He pointed out the need to understand why countries do not have problems in creating sector regulators to deal with competition in those sectors, but often exhibit a certain degree of laziness in establishing a ‘specialised’ competition authority to carry out the same function for the entire economy. The issue of the relationship between regional and national competition authorities also came up during the conference and may need to be studied closely.

Peter D’Souza pointed out that it is important to strategise the advocacy aspect of the project so that it would be able to deal with the identical challenges coming out from the countries. He also pointed out that the Gambia story on the groundnut sector can be focused on closely, as it could provide a good human interest angle one reforms are made. Elia Ayuk of IDRC pointed out that the project should be able to move to the next stage and address the ‘so what’ question; after the findings have emerged, it is important to strategise on action points. He also pointed out that there is not much evidence coming out of the project so far of anti-competitive practices in the agriculture sector and hoped that this would be an area that each partner would take a closer look at. He expressed that IDRC is extremely interested to study the outcomes of the agriculture markets studies.

Alhaji Tamu Njie of Gambia Competition Commission and John Njie, Pro-PAG then gave words of thanks to participants, and expressed gratitude for having obtained the opportunity to host the conference. Pradeep Mehta thanked all the participants and CUTS co-hosts from The Gambia for the conference.

### III. List of Participants

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