

Roundtable Discussion
**“Civil Society Participation in Evolving Functional Competition Regimes in Africa –
The Road Ahead”**
Cape Town, 5 May 2006

CUTS Centre for Competition, Investment & Economic Regulation (CUTS CCIER) organised a roundtable discussion to delve into the above-mentioned issue and come up with a set of recommendations on how the civil society can play an active role in developing functional competition regimes in the continent. The roundtable discussion was attended by select representatives from the civil society and competition authorities.

The following issues emerged from the discussions:

1. There was a consensus that the need for competition policy and law was very pronounced in African developing and least developed countries. The reason for this realisation was that - there was a lot of concentration of economic powers in Africa, which prompted anti-competitive behaviour at all levels in the market. Experience tells that public procurement of goods (which affect majority of the population), such as in case of medicines in many in countries in Africa is affected by anti-competitive practices.
2. The situation was further aggravated due to the fact that big corporations and MNCs operating in the continent were able to capture a lot of politicians (*political capture*) by – offering them directorship in companies; making them large shareholders; exerting influence and by various other means. This has led to the erosion of political support for competition in the African countries.
3. The Civil Society has emerged as a strong constituency that has developed a good understanding on economic policy and regulatory issues over time in various parts of Africa, and is the stakeholder group, which could play the most significant role in promoting competition policy issues in the continent.
4. Many competition authorities are not allowed to interact directly and freely with the press (media) by the politicians, Ministers, etc by invoking the code of conduct rules of government employees, and therefore cannot undertake awareness and advocacy functions effectively. This is also due to the political culture as outspoken and media friendly public servants are hardly been tolerated by the Ministers/politicians. The civil society can act as a bridge and help competition authorities in developing wider public support for competition.
5. It was asserted that the process of competition enforcement cannot ignore the socio-economic construct in developing countries, and that a functional competition regime could even help contribute to the process of achieving Millennium Development Goals (MDGs) in the continent – especially targets dealing with access to health facilities, education and other basic services.

6. There was a need to identify students, academicians and University departments that are interested to working on (or have already been working on) competition policy and law issues, and to involve them into the process proactively. The academicians could help in demystifying the benefits that accrue from an effective competition regime, as often these benefits could be abstract and cannot be perceived readily.
7. Competition Policy and Law courses should be introduced at the University level.
8. In various countries the voice of consumers (consumer lobbies) has been quite weak, and there is an urgent need to strengthen this. Whatever little activities consumer lobbies have undertaken, have been restricted to the retail sector. Consumer associations need to complement the activities of competition authorities by providing information on anti-competitive business practices that exists at the local level, and are difficult for competition authorities to detect and penalise. Further, there is also a strong link between corruption and competition enforcement, and the civil society could act as a watchdog to help identify the cases of corruption that impede competition law enforcement.
9. There was some thought in favour of developing an “African Competition Network”, comprising of members from civil society organisations (academicians, NGOs, consumer associations, university departments, etc.) and officials from the competition authorities. This was in view of the fact that African competition authorities are relatively new institutions in most of the countries (barring a few like Kenya, South Africa, Zambia, etc.), and that civil society organizations need to be involved in the process of evolving functional competition regimes, so by providing a platform through this network there would be sharing of values, ideas and experiences.
10. A call was given to the competition authorities in the continent to undertake capacity building of the civil society on competition issues (may be even through involvement of outside agencies/experts), and then to involve them in the process of competition enforcement – especially by promoting competition awareness and understanding.
11. It was decided that efforts would be made to see how civil society could be engaged with the Eastern and Southern Africa Competition Forum (ESACF)¹. ESACF has a mandate to develop capacities on competition, and it could be seen how this function could be extended to support civil society organisations. ESACF would need to associate competition experts and scholars with an interest on the issue of role of competition policy in development.
12. One way of ensuring civil society’s stake in developing competition regime in the African countries was to have credible civil society representatives on the Board

¹ ESACF – A Forum with membership of competition authorities from the region. Comprise of seven *members* (Kenya, Malawi, Namibia, Tanzania, South Africa, Zambia and Zimbabwe) and 5 *observers* (Botswana, Ethiopia, Mauritius, Mauritania and Seychelles). Peter M Njoroge is the current Chairperson. Efforts are being made to raise funding from the USAID.

of Commissioners of Competition Authorities. There are provisions for this in the competition laws of Tanzania, Zambia and Zimbabwe, something that Kenya is also trying to establish.

13. Engagement of civil society actors like – trade policy forum, law societies, bar associations, and other stakeholders like manufacturer’s associations, chambers of commerce into the process would be very useful. Efforts to this end are being made in countries like Namibia. (Namibia has a young but energetic competition authority).
14. COMESA passed a regional competition policy in 2005, and a Secretariat for implementing this regional competition policy would be established very soon. However out of the 20 member countries, very few have a competition law. So the COMESA member countries without a competition law would soon need to embark on the activity for developing a competition policy/law for their countries. Efforts should be made to help COMESA members without a competition agency to undertake an assessment of provisions in their domestic policies that affect (negatively/positively) competition, and also take note of the prevailing anti-competitive practices in their countries².

² CUTS has already undertaken a detailed study of the competition regimes in COMESA member countries like Zambia, Kenya, Ethiopia, Malawi, Mauritius, Uganda under the 7up1 and 7up3 projects. In addition to sharing the outcomes of the research with the COMESA Secretariat, it would also be useful to undertake similar studies in other COMESA member states without a competition law in place.