Technical assistance to the SADC Secretariat to enhance regional integration and harmonization of competition and consumer policy in the SADC Member States

SADC Guidance Note: Advocacy for Competition Agencies

This and the other best practice guidance documents under the Project focus on the “best enforcement and analytical practices” that are already applied by SADC competition authorities. Significant attention is given as well to best practices developed elsewhere, which, based on the judgement of the Project Team, our consultations and the End of Project Workshop, should be considered by SADC CAs and stakeholders in the future.

The sources for the best practices are often indicated in the references in the main text and in the bibliography of each document. Other sources include the many interactions with competition authority officials during the Project and the previous work of Project Team members and the SADC Secretariat Programme officer.

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Key Issues for Competition Advocacy in SADC

- Competition advocacy is faster, cheaper and more forward looking than enforcement. It acts to prevent anti-competitive harm rather than the costly redress of harm that has already occurred.

- In SADC Member countries, the advocacy competition agencies undertake not only complements but may exceed competition law enforcement.

- Competition agencies need to harness all forms of media to sensitise and educate the general public.

- Competition agency advocacy activities should include state-imposed / state-condoned constraints on competition.

- Competition agencies should conduct advocacy at all stages in legislative and regulatory decision-making.

- Effective competition advocacy requires that competition agencies are known to be independent.

- Transparency increases the effectiveness of advocacy. It enhances the perception of the competition agency as an independent organisation working in the public interest.

1. Introduction: The role of competition advocacy

Competition advocacy complements competition law enforcement. It helps build a culture of competition that works against the appearance of anti-competitive practices in both businesses and public agencies. Whatever stage of development a competition agency is at, it needs to undertake advocacy and outreach as an on-going and integral element of its workload.

Competition advocacy includes all those activities a competition authority undertakes through non-enforcement mechanisms to promote a competitive environment. The aim of such advocacy is to sensitise other government bodies and the general public to the benefits of competition for economic efficiency and consumer welfare while improving the general understanding and acceptance of the competition rules. This helps to create a competition culture that demands fair and efficient markets.

The OECD and the ICN are active on the international level to broaden competition advocacy to include:

- Performing reviews of existing and proposed laws and regulations;

- Providing advice on state measures that might foster anti-competitive practices and associated resource misallocation;

- Outreach activities to educate the public.
directly by holding seminars and publishing newsletters
indirectly through the media;

- Informing judges and legislators about competition policy-related matters;
- Undertaking studies of actual or potential state measures that may influence market outcomes.

A competition authority's duties in the area of advocacy and the procedures to be followed by a competition authority and other state bodies can be codified in law. A competition authority may have the legal right to be consulted at a certain point in time on proposals by state bodies to change the manner in which the economy is regulated.

The manner in which other state bodies respond to the advice proffered by the competition authority in the conduct of its competition advocacy function can also be enshrined in law. Representatives of the competition authority, usually the CEO, can also be given the right to sit on other government bodies on terms established in law including, in principle, the cabinet of a government or other senior decision-making governmental fora.

2. Competition Advocacy in SADC Members

While competition advocacy should be an integral activity for any competition agency, it is particularly important for SADC Member States and other developing countries. In transition and developing countries, new competition authorities should give equal weight to advocacy and enforcement actions for reasons such as the following:

- The recent spread of market reform results in an intensive rule making process. Dialogue between the competition authority and other rule makers at an early stage can help to ensure that competition provides the foundation for legislation
- Competition authorities are considered less prone to regulatory capture by interest groups than sector-specific regulators. Competition advocacy by competition agencies can introduce efficiency values into sector specific regulation, reducing the possibility of regulatory capture
- Competition law enforcement typically requires sophisticated adjudication of competition cases which takes time and resources for a young competition authority and judicial system to acquire

3. SADC Guidance Note on Competition Advocacy

a) SADC competition agencies should closely examine any anti-competitive restriction, particularly those proposed by regulatory bodies dominated by industry members:

- Examine any exemptions from the competition laws to see whether there are any sound legal and economic grounds for sheltering such anti-competitive conduct;
- Use expertise to examine the cause of the anti-competitive conduct;
- Gather supporting empirical data;
- Assign political responsibility for actions that harm consumers.

b) SADC competition agencies should undertake advocacy based on the principle that the public has a right to know and competition agencies have a responsibility to explain how competition and the competition law works.

SADC competition agencies should inform:
- Businesses - what the law requires of them;
- The legal community - how to interpret the competition law;
- Consumers - about their rights, risks and their responsibilities to complain and inform other consumers.

SADC competition agencies should promote and gather support for a competition culture:
- In the general public;
- Within the government.

c) SADC competition agencies should disseminate timely and accessible information on their goals and achievements:
- Consistent messages are more comprehensible and memorable;
- Reinforce competition agencies credibility and independence.

d) Competition advocacy is most effective when:
- The competition authority is specifically invited to comment, which:
  - ensures that advocacy is directed to officials with decision making authority;
  - ensures at least a minimum level of interest in the agency’s views;
  - prevents the appearance of over-reaching.
- The agency comments on issues on which it has substantial or unique expertise.
- The agency has held hearings or workshops on:
  - issues raised in the agency’s cases or investigations;
  - issues that have been addressed in staff reports;
  - issues on which the agency has done empirical research.

e) Competition advocacy can be supported by but should not be considered to include and therefore should go well beyond general competition communications and education documents such as:
- Guidelines, policy statements, speeches, testimony;
- Workshops, conference presentations;
- Reports, the competition authority’s Annual Report.
Bibliography and Advocacy Resources:

1. The International Competition Network (ICN)
   http://www.internationalcompetitionnetwork.org/working-groups/current/advocacy/seminars.aspx

2. The ICN Teleseminar Series
   The ICN Competition Advocacy Working Group conducts a series of seminars dedicated to topical competition advocacy issues.

   • 2010-2011
     - Teleseminar on Competition Advocacy with Lawmakers
       Slide Deck from March 28, 2011 teleseminar on Competition Advocacy with Lawmakers. Includes presentations from agency members from Chile, Poland, Zambia, Spain, Mexico and France.

       - Teleseminar on Competition Advocacy in the Transportation Sector
         Presented on February 7, 2011 by James MacBeth, UK Office of Fair Trading; Rafael Coloma Ojeda and Marcos García Alfonso of the Comisión Nacional de la Competencia (Spain); Ralitsa Kyoseva and Nadejda Tzvetkova of the Commission on Protection of Competition, Bulgaria; Russell Pittman, US Department of Justice; Vladimir Kachalin, Russian Federal Antimonopoly Service.

     • 2009-2010
       - Building Relationships between Competition Authority and Private Bar: The Experience of Canada. Presented on September 29, 2009 by Sheridan Scott, a partner at Bennett Jones LLP and former Canadian Commissioner of Competition; Adam Fanaki, Acting Senior Deputy Commissioner of Competition, Mergers Branch with the Canadian Competition Bureau; and John Bodrug, partner at Davies Ward Phillips & Vineberg LLP.

       - Government Involvement in Markets. Presented on November 4, 2009 by John Fingleton, Chief Executive of the UK Office of Fair Trading and Chair of the ICN Steering Group, and Chris Jenkins, Head of Competition Advocacy at the OFT.

       - Advocacy: The Role of International Organizations: An Example from the OECD. Presented on November 17, 2009 by Hilary Jennings, Head of Competition Outreach, OECD.


- Competition Advocacy in an Economic Downturn. Presented on January 12, 2009 by John Fingleton, Chief Executive of the UK Office of Fair Trading and Chair of the ICN Steering Group, and Chris Jenkins, Head of Competition Advocacy at the OFT

- Striking Balance Between Competition Advocacy and Enforcement Activity in Solving Current Challenges to Promoting Competition in Russia. Presented on March 10, 2009 by Igor Artemjev, Head of the Federal Antimonopoly Service of Russia

- Competition Advocacy in Poland. Presented on April 17, 2009 by Olga Jabionowska, Head of the International Relations Unit, Department of International Relations and Communication, Office of Competition and Consumer Protection and Marta Skrobisz, Expert, Department of International Relations and Communication, Office of Competition and Consumer Protection

3. The European Commission - “Benefits of competition policy for consumers”
The video highlights how competition is essential to the lives of all consumers. It is the process of competition that encourages companies and businesses to strive to provide new products or quality services at competitive prices.

http://www.bis.gov.uk/files/file13299.pdf

4. CUTS International - 5TH DECEMBER WORLD COMPETITION DAY

CUTS urges countries and competition agencies worldwide to gear up for observing 05th December, once again this year as the World Competition Day. This is an occasion to propagate the benefits of competitive markets and harmful effects of anticompetitive behaviour to citizens, nationally.

It is important for the agencies to engage in education and outreach programmes to raise awareness about the harmful effects of cartels on consumers and the economy.

Interested countries/competition agencies are encouraged to contact cuts@cuts.org/c-cier@cuts.org for assistance, etc.

Please visit the following weblink for information related to CUTS campaign on World Competition Day: www.incsoc.net/World_Competition_Day.htm