



SADC DECLARATION

ON

REGIONAL COOPERATION IN COMPETITION AND

CONSUMER POLICIES

DRAFT SADC DECLARATION ON REGIONAL COOPERATION IN COMPETITION AND CONSUMER POLICIES

PREAMBLE

WE, the Heads of State or Government of:

The Republic of Angola
The Republic of Botswana
The Democratic Republic of Congo
The Kingdom of Lesotho
The Republic of Malawi
The Republic of Mauritius
The Republic of Mozambique
The Republic of Namibia
The Republic of Seychelles
The Republic of South Africa
The kingdom of Swaziland
The United Republic of Tanzania
The Republic of Zambia
The Republic of Zimbabwe

NOTING that Article 25 of the SADC Protocol on Trade (hereinafter the Protocol) provides that Member States shall implement measures within the Community that prohibit unfair business practices and promote competition; and that the Protocol also provides that a framework of trade co-operation among Member States based on equity, fair competition and mutual benefit will contribute to the creation of a viable Development Community in Southern Africa.

RECOGNISING the important role which competition and consumer policies can play in promoting economic growth, economic efficiency, development and alleviation of poverty in the region.

NOTING that some SADC Member States have already adopted national competition laws as well as comprehensive consumer laws while other SADC Member States have yet to adopt such laws.

REALISING that a key challenge stems from the recognition that competition and consumer protection laws are national but the relevant markets can extend beyond national boundaries. And further that, case specific cooperation on competition issues arising from the growth of cross-border anti-competitive practices is an essential element of regional integration; and convinced that there is a need for increased regional cooperation in addressing cross-border anti-competitive practices.

REALISING FURTHER, that the emerging importance of competition and consumer laws within the SADC countries, some of whom are members of overlapping integration groupings, poses a challenge for case specific cooperation and calls for progress in SADC countries towards the convergence of competition and consumer laws.

REALISING FURTHER, that there is a need to formalize a system of cooperation between national regimes that can harness the collective efforts of relevant national authorities and add value to national enforcement efforts in the face of problems affecting more than one country.

RECOGNISING the importance of sensitising policy makers, parliamentarians, judiciary, business community and the general public on the role and importance of competition and consumer protection policies.

RECOGNISING FURTHER that effective regional integration requires Member States to adopt and enforce competition laws in tandem with the implementation of the integration agenda leading to the realisation of the Free Trade Area (FTA) by 2008, a Customs Union by 2010, a Common Market by 2015 and a Monetary Union by 2018.

HEREBY DECLARE THAT:

1. EFFECTIVE COOPERATION

- (a) There shall be established a system for effective cooperation in the application of Member States respective competition and consumer protection laws;
- (b) To make cooperation effective, Member States shall take the necessary steps to adopt, strengthen and implement the necessary competition and consumer protection laws in their respective countries;
- (c) The SADC Secretariat shall establish a mechanism to bring about effective cooperation in competition and consumer protection matters;
- (d) Adequate resources shall be provided to the SADC Secretariat to enable it to implement this process of cooperation;
- (e) Cooperation shall be enhanced by establishing a transparent framework that contains appropriate safeguards to protect the confidential information of the parties and appropriate national judicial review;
- (f) Member States shall have regard to comity principles, including positive comity, as an instrument of regional and bilateral cooperation within the region, including informal positive comity referrals among competition enforcement authorities;

- (g) Member States shall pursue case specific cooperation to the extent consistent with each member's laws, regulations, and important common interests in preventing hardcore cartels, abuse of dominance, anti-competitive mergers and unilateral conduct;
- (h) Member States shall review those provisions in their laws that stand in the way of these cooperative efforts and explore areas where they are prepared to enter into binding agreements; and
- (i) Cooperation shall proceed in a gradual and phased approach with the ultimate aim of achieving harmonisation and establishing a regional framework in competition and consumer policies.

2 THE COMPETITION AND CONSUMER POLICY AND LAW COMMITTEE

- (a) The SADC Secretariat shall establish a standing Competition and Consumer Policy and Law Committee (CCOPOLC) to implement the system of cooperation.
- (b) The CCOPOLC, taking into account the development needs and existing commitments on competition policy of Member States shall:
 - (i) foster cooperation and dialogue among competition authorities aimed at encouraging soft convergence of laws and policies, analysis, common understandings and common competition culture;
 - (ii) foster cooperation and dialogue in the field of consumer policy and facilitate further convergence in this area;
 - (iii) facilitate and coordinate capacity building and technical assistance programmes for the development and implementation of competition and consumer policy and law of SADC Member States;
 - (iv) facilitate and coordinate ways and means to deal with regional and global effects of anticompetitive practices and facilitate the coordination of negotiating positions with third parties;
 - (v) consider the nexus between trade, competition and consumer protection policies in promoting growth and the alleviation of poverty;
 - (vi) cooperate with other relevant regional and international institutions and where appropriate seek convergence in approaches to competition and consumer protection matters;
 - (vii) assist in preparing and conducting advocacy programmes, studies *inter alia* on constraints on competition, regional and international competitiveness; the treatment of parallel imports as an aspect of the application of competition policy in relation to intellectual Property Rights; the benefits of competition law and policy for

consumers; the link between competition policy and investment; the link between competition policy, privatization and development; the impact of international cartels on the development of developing countries; and

- (viii) have due regard to the United Nations Set of Principles on Competition as a basis for consensus-building in international cooperation in competition policy while taking into account the development dimension

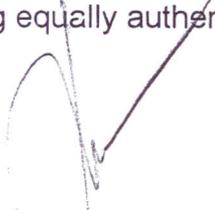
3. FUNCTIONS OF THE SECRETARIAT

1. The Secretariat shall:

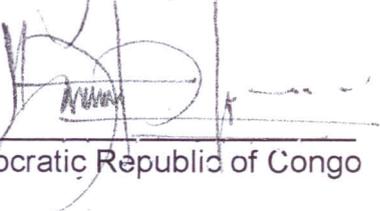
- (a) facilitate the setting-up of competition authorities in those Member States that have no such institutions, harmonisation of national laws and learning from the best practices and experiences of the developed competition authorities;
- (b) facilitate competition and consumer protection advocacy programmes involving the sensitisation of policy makers, parliamentarians, the judiciary, the business community, and the general public about the role of competition and consumer policies;
- (c) facilitate capacity building and technical assistance in support of the implementation of competition and consumer laws in Member States;
- (d) facilitate the preparation and undertaking of studies *inter alia* on constraints on competition on regional and international competitiveness; the treatment of parallel imports as an aspect of the application of competition policy in relation to Intellectual Property Rights; the benefits of competition law and policy for consumers; the link between competition policy and investment; the link between competition policy, privatization and development; the impact of international cartels on the development of developing countries;
- (e) develop a full programme of the implementation of this declaration and report progress to the Ministers responsible for Trade and Industry annually; and
- (f) mobilise human and financial resources for the implementation of this programme from Member States and International Cooperating Partners including the European Union, United Nations Conference on Trade And Development and Commonwealth Secretariat.

IN WITNESS WHEREOF, WE, the Heads of State or Government, or our duly authorised representatives, have signed this Declaration.

Done in Kinshasa, the Democratic Republic of Congo, this 8th day of September, 2009 in three (3) original texts in the English, French and Portuguese languages, all texts being equally authentic.



Republic of Angola



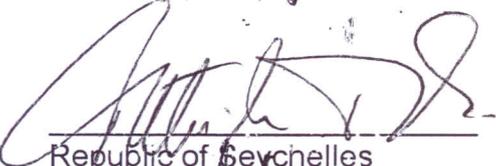
Democratic Republic of Congo



Republic of Malawi



Republic of Mozambique



Republic of Seychelles

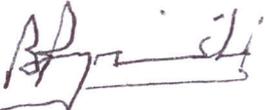


Kingdom of Swaziland



Republic of Zambia

Republic of Botswana



Kingdom of Lesotho



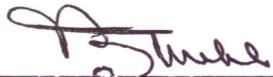
Republic of Mauritius



Republic of Namibia



Republic of South Africa



United Republic of Tanzania

Republic of Zimbabwe