

AFRICA CONTINENTAL FREE TRADE AREA (AfCFTA)

**NEXT STEPS IN THE AfCFTA : DEVELOPMENT OF A
COMPETITON FRAMEWORK
FOR THE AfCFTA**

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RECAP – (CONCLUSIONS)

Competition Regimes in the Developing World (Key Challenges)

- Many DCs/LDCs have adopted competition laws in the last decade or so, but **implementation remains limited & weak**
 - ▶ Resistance by some Member States to accept the supremacy of continental rules over national laws
 - ▶ Lack of Government support and political will for harmonization of national competition laws with continental best practices.
 - ▶ Lack or absence of a competition culture at national level
 - ▶ Lack of both financial and human resources to effectively implement competition laws at national level
 - ▶ Protectionism programs very popular to businessmen in most African countries. .

INTRODUCTION

The AfCFTA Competition – What Model ?

- Institutional framework for the design and implementation of the AfCFTA Competition should be discussed in depth.
- To avoid failures encountered during the EPA Competition text, the discussions should cover all aspects: scope of application, definitions. Rules relating to abuse of dominance, restrictive business practices, mergers and acquisitions, unfair competition and more importantly the organizational and enforcement matters, binding nature of the agreement, the legal and institutional relationships between the national, regional and continental institutions.
- Are we thinking of a cooperation agreement i.e. limited to capacity building , exchange of information, joint exercises in enforcement. ? Are we thinking of creating a supranational agency at continental level with powers to enforce the competition policy, or is it continental cooperation in competition enforcement, need to address human and financial constraints i.e. capacity building issues.
- Great need to prepare the environment – to make it right, unlike during the EPA negotiations.
- What are the benefits, e.g. cost of doing business? consumer welfare, poverty eradication

WHAT NEXT ? NEED TO DEVELOP AN IMPLEMENTATION PROJECT

- Under the Project, AU Commission shall, therefore:
 - identify and enumerate AU Member States with a competition framework in place and those without one;
 - document national policies and practices relating to competition, including legislative provisions and institutional arrangements;
 - establish existing capacities at national level with particular attention to any limitations in the realization of a truly competitive continental economic environment;
 - Identify and establish good provisions and practices in legislation and working mechanisms respectively;
 - Identify objectives, converges and divergences among different national legislation i.e. matter of exemptions,
 - develop “*good and relevant practices*” at national level for circulation to all Member States for their adaptation and adoption.
 - develop and implement a CFTA Competition Policy which will take full account of the developments and existing level of development and or economic situations at national level;

PHASES OF THE PROJECT

- It is proposed that the project be undertaken in four phases covering all AU Member States over a period of 20 months. The four phases shall involve:-
 1. developing a set of key component of the continental competition policy
 2. Disseminating the AfCFTA Competition Policy to all Member States and ensuring its implementation;
 3. Assessment of needs and technical assistance to individual countries, providing capacity building support to selected Member States in developing and/or improving competition legislation and/or agency practices (with this carried out on a continuous basis, as required, throughout the duration of the project); and
 4. Development of continental/regional co-operation/enforcement legal framework in competition matters.

PHASES OF THE PROJECT

- A Project Coordinator shall be recruited by the AU Commission . Provision is also made to employ short-term regional and international experts in competition policy with experience in the development and implementation of a competition framework in a continental/ regional context. Such experts may be identified from the continent, world bank , OECD, from the European Commission competition authorities or independent consultants with the requisite experience.
- The project shall recruit national experts for dissemination and public awareness activities (Phase II) of the Project, and to undertake situational analyses during Phase III of the Project in the Member States. These experts may be drawn from the national competition agencies, where these exist, or from the private sector. The national experts may also be used during the capacity stage.
- It is envisaged that the involvement of national experts shall enhance ownership of the process and especially of the modifications/developments arising from implementation of the project. These national experts may also be used for subsequent follow-up activities by the AU Commission.
- Each phase shall elaborate the activities.

PHASE 1 – DEVELOPMENT OF A AfCFTA COMPETITION POLICY

- Having reviewed international and comparable regional competition arrangements, and taking into account national circumstances both in law and practice, the Project shall develop a set of principles and draft the home grown AfCFTA Competition Policy –:
 - Economic mapping at continental level to identify economic concentrations, areas of concern,
 - Need for incorporation the notion of the four freedoms.
 - Dealing with major National public interest issues at national level
 - Harmonisation of competition laws,
 - Matters of thresholds– mergers, dominance, ‘substantially’. Etc.

PHASE II – PUBLICITY AND DISSEMINATION OF A CONTINENTAL COMPETITION POLICY

- Phase II of the Project will increase public awareness of the AfCFTA Competition Policy through a publicity campaign, after and before Council has duly adopted the Policy.
- It is envisaged that national competition agencies, chambers of commerce and industry and manufacturers' associations in AU Member States shall undertake publicity on a continuous basis during Phase II and well after the project is over.

PHASE III – ASSESSMENT OF NEEDS AND TECHNICAL ASSISTANCE TO INDIVIDUAL COUNTRIES: DEVELOPING AND STRENGTHENING NATIONAL COMPETITION AGENCIES

- During this Phase, which could run in parallel to Phase II and immediately after Phase I, the Project shall seek to provide capacity building support to existing national competition agencies in areas identified under Phase I and to assist countries according to their individual needs in the development or strengthening of national competition institutional frameworks for implementing the recommendations defined in Phase I. This Phase will be carried out, as required, on a continuous basis throughout the life of the project.

PHASE IV – DEVELOPMENT OF AfCFTA CO-OPERATION/ ENFORCEMENT IN COMPETITION MATTERS

- One of the objectives of the Project shall be to develop a policy of either continental co-operation or enforcement among the AU Member States responsible for the implementation of the CFTA competition policy.
- Need to be guided by experience – what works?

Conclusion

- Continental competition policy framework needs to balance convergence and harmonization of policies and respect of state sovereignty.
- Two key options for continental enforcement: (i) development of a continental enforcement authority that would ease the burden of firms engaged in cross-border transactions; or (ii) member states and RECs should devise a strong cooperation mechanism in the fight against cross border anticompetitive practices.
- Advocacy activities critical to enhance competition culture and rally support of key stakeholders (consumers, businesses, judiciary, and government)

THANK YOU

Any comments to:-

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