



Botswana Competition Policy National Reference Group

**Botswana Competition Policy
National Reference Group Meeting
27th May, 2005
BNPC,
Gaborone**

Reference Group Meeting Report

Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa

7Up3 Project

National Reference Group Meeting

Date: 27th May 2005

Venue BNPC

Place Gaborone, Botswana

Partner Organizations:



Department for
International
Development, UK



Table of Contents

Abbreviation.....	4
Acknowledgement.....	5
Introduction and Background Information.....	6
Project Summary.....	6
Implementing Organization.....	6
Participating Country.....	7
Objectives.....	7
Reference Group Meeting.....	8
7Up3 and Role of NRG.....	10
Current Operations of CUTS.....	10
CUTS C-CIER.....	12
Comments and Questions.....	14
Competition Scenario in Botswana.....	15
Experience on Competition Law.....	16
Nature of Market.....	17
Comments and Questions.....	18
Snapshots.....	21
Annex.....	22
List of Participants.....	22
Meeting Program.....	23

Abbreviation

BIDPA	Botswana Institute for Development Policy Analysis
BNPC	Botswana National Productivity Centre
BOCONGO	Botswana Council of Non Governmental Organizations
CBO	Community Based Organizations
C-CIER	Centre for Competition, Investment and Economic Research
CSO	Civil Society Organizations
CUTS	Consumer Unity Trust Society
DFID	Department for International Development, UK
DoCA	Department of Consumer Affairs
INC	International Competition Network
INCSOC	International Network of Civil Society Organizations
MoTI	Ministry of Trade and Industry
NGO	Non Governmental Organization
NORAD	Norwegian Agency for Development Co-operation
NRG	National Reference Group
PCP	Preliminary Country Paper
SACU	Southern African Customs Union
SADC	Southern African Development Community

Acknowledgement



Mr. B. Mogotsi
Program Manager
BOCONGO

Botswana does not have a Competition Law or Competition Policy. However, the need for a Competition Policy and Law has long been recognized. The Competition Policy is, therefore at the final phase of development as it is now being considered by Cabinet for approval. At this point it is quite necessary to involve civil society organizations in the process and build consensus amongst various stakeholders.

This National Reference Group Meeting wouldn't have been possible without support from CUTS and BIDPA. I take this opportunity to thank them for their sincere efforts towards the same. I would also like to thank DFID and NORAD for providing their support in making this meeting a success. In the end I would also like to thank the BOCONGO Secretariat and partners as well as BNPC for facilitating and hosting the event.

We hope to receive the same help and co-operation in future.

Mr. B. Mogotsi,
Programs Manager,
BOCONGO.

Background Information: CUTS Project

7-Up3: Capacity-building on Competition Policy in Select Countries of Eastern and Southern Africa

1. Project Summary

CUTS' runs a research and advocacy project on competition regimes in seven developing countries entitled 7 up project. Phase one of the project was concluded in 2003 and is said to have been very successful in raising awareness and stimulating debate on competition issues and helping in reforms in the project countries. This has created a felt-need to take up similar activities in other countries as well. Consequently, CUTS has taken up another project in selected Asian Countries, titled 7-Up2. Similarly, a strong need for such a project has been felt in the Southern and Eastern Africa region. An important finding of the project is that it is necessary to have a regional approach to competition policy in the region as the national markets in the region are getting integrated.

The national markets in the region are integrating through three regional bodies, viz., COMESA, SADC and EAC with considerable geographical overlap. All these bodies have recognized the mal-effects of anti-competitive practices in the context of regional integration. The COMESA Secretariat is in the process of developing a regional competition policy. However, most of the countries in the region including Botswana are either in the process of, or are yet to put in place a framework for a competition regime at the national level. Hence, concerns have been expressed about the effectiveness of a regional competition policy without solid competition framework at national levels which can work as building blocks for a regional competition policy.

Thus there is an urgent need to evolve a competition regime and strengthen competition culture in the region. This can be done through guided research and increased awareness among the stakeholders on that basis. The unique feature of the project is that it has been designed to take a bottoms-up approach, by involving all possible stakeholders in the process.

For this purpose, CUTS decided to work with research and non-governmental organisations, and other stakeholders such as chambers of commerce, government and media in the targeted countries. The project will be carried out under the guidance of a project advisory committee comprising of economists, experts and practitioners.

2. Implementing Organisation:

CUTS Centre for Competition, Investment & Economic Regulation (C-CIER)

3. Participating Countries

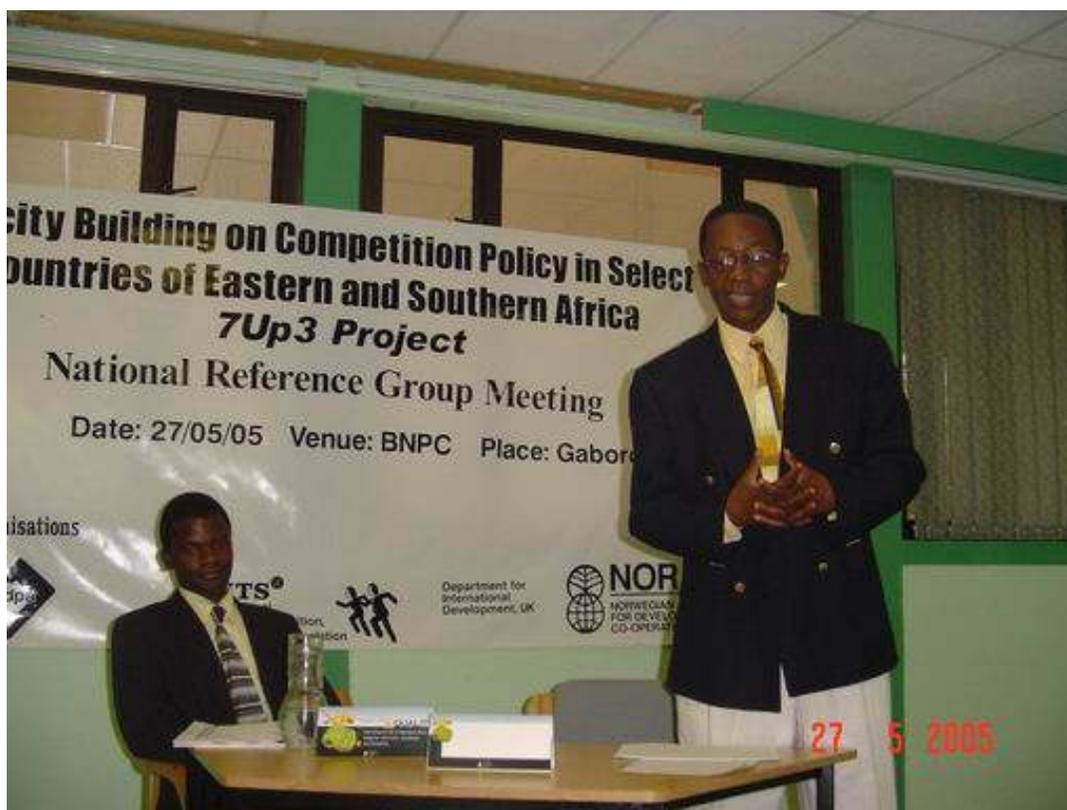
The project will be conducted in the following seven countries: Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia and Uganda.

4. Objectives

The following are the objectives of the project:

- To conduct an evaluation of the competition concerns, including their regional dimensions, facing these countries and the existing architecture for dealing with those concerns by identifying key constraints;
- To develop the capacity of all the stakeholders including the policy makers, regulators, civil society organisations, particularly consumer groups, academics and media persons to understand and appreciate competition concerns from national as well as regional and international perspectives;
- To provide inputs for drafting new legislation or reforming existing legislation, drawing on best practice from other countries;
- To prepare and distribute materials on competition policy & law widely to raise national awareness;
- To identify key stakeholders to form and institutionalise a national reference group in each project country and organise meetings/trainings; and help build constituencies for promoting competition and consumer awareness by actively involving and building capacity of policy makers, civil society organisations, academics and media persons.

National Reference Group Meeting



Mr. B. Tlale Executive Secretary of BOCONGO welcoming participants

Welcome Remarks

Mr. Baboloki Tlale, the Executive Secretary of BOCONGO provided the welcome remarks and indicated that all representatives present should use this meeting as a means of working together in development of the competition policy for Botswana. Mr. Tlale highlighted the importance of competition policy and walked through the benefits of competition in the market. He also pointed out the fact that the government alone can't win the battle alone – Civil Society partnerships need to take place. Mr. Tlale reiterated the critical need for everyone to actively participate in the presentations and the discussions to bring out the best results from the meeting.

Thereafter he handed over the floor to Session Chairperson Mr. Barulaganye Mogotsi (Programmes Manager at BOCONGO)

Mr. B. Mogotsi cordially welcomed the participants to the meeting and provided the historical background of the work government has put in to develop a draft competition policy. Through this meeting he laid the platform for the civil society organizations to respond to the issues. Through the example of Somareleng Tlkologo a local NGO's "Green Shop" and Kgetsi ya Tsie a local CBO activist, he told that NGOs also need to understand the importance of a Competition policy as it also affects us directly or indirectly.

He then introduced Mr. James Chansa (CUTS Zambia) and invited him to make his presentation.

7Up3 and the role of NRG

Vision: CUTS International

“Consumer sovereignty in the framework of social justice and equality, within and across borders”

CUTS has been working since 1984 towards fulfillment of this vision from the grass-roots to the national, regional, and global level.



Mr. James Chansa from CUTS Zambia making his point

Current Operations of CUTS

Currently, CUTS has five centers in Asia, two in Africa and one in Europe. They are as follows:

In Asia (India)

- CUTS Centre for International Trade, Economics and Environment
- CUTS Centre for Competition, Investment and Economic Regulation

- CUTS Centre for Consumer Action, Research and Training
- CUTS Centre for Human Development
- CUTS Calcutta Resource Centre

In Africa

- CUTS Lusaka Resource Centre
- CUTS Nairobi Resource Centre

In Europe

- CUTS London Resource Centre

CUTS Centre for Competition, Investment and Economic Regulation (CUTS C-CIER) was established as a separate Centre in 2001. C-CIER is working on competition, investment, economic regulation and consumer protection issues and it operates under the guidance of an International Advisory Board

CUTS C-CIER

Mission: “To be a centre of excellence on regulatory issues”

Functional Areas:

- **Competition Policy and Law**
- **Economic Regulation**
- **Consumer Policy**
- **Investment and Corporate Issues**
- **Services**

7Up3 Project: Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa

Project Countries include:

- 1) Botswana
- 2) Ethiopia
- 3) Malawi
- 4) Mauritius
- 5) Mozambique
- 6) Namibia
- 7) Uganda

Partner Organisations

Since it's a multi-country project, its implementation takes place in a very systematic approach. Every project country has 2 partner organizations to carry on the proper implementation of the project.

- *Research Partner*¹: To engage in assessment of the prevailing competition regime in the countries
- *Advocacy Partner*²: To undertake outreach activities and networking within the countries for sensitizing all stakeholder groups

Project Objectives

- Evaluating competition concerns in project countries, and identifying key constraints behind them
- Developing capacity of the stakeholders to understand and appreciate these concerns and respond appropriately
- Raising awareness on competition policy through dissemination of relevant and useful information
- Constituting a 'National Reference Group' (NRG) of key stakeholders in each project country
- Linking the local partners with international networks on competition like the International Competition Network³ (ICN), International Network of Civil Society Organisations on Competition⁴ (INCSOC)

Project implementation process

Stage I: Research and Consultation

A. Preparatory Phase^{*5}

- Identifying Partner Institutions,
- Preparing the *Operational Strategy Note*,
- Commissioning background papers on each project country
- Organizing Launch Meeting on 22/23 March, 2005

B. Research Phase

- Analyze the macro-economic and institutional context of competition, covering:

¹ BIDPA: Botswana Institute for Development Policy Analysis

² BOCONGO: Botswana Council of Non Governmental Organisations

³ Global body looking at competition issues

⁴ Empowers civil society organizations worldwide on competition issues.

⁵ Activities have been accomplished

a) *Government policies (internal and external liberalization, privatization and national ownership, regulatory policies, consumer policy etc.)*

b) *National, regional and global dimensions of competition policy from the project country perspective*

- Analyze market structure for competition abuses and distortions
- Incorporate cross-sectional perceptions on competition nationally (through questionnaire surveys)

C. Interaction Phase: (Dialogues and Seminars)

- Participatory Research: with inputs from NRG members on the PCP and the Country Research Report.
- Discussion and debate on research findings involving key stakeholders
- Consultation with outside experts and regional authorities: *Regional Seminar*
- Assess capacity building needs in consultation with the national NRGs

Stage II: Advocacy and Training

Advocacy Phase

- Networking: NRG members as ‘missionaries’ of the project
- Public education: through personal interactions with policy-makers, and public events to reach consumers
- Awareness generation: disseminating relevant information and resources through appropriate for a.
- Media interactions: using the media to target a wider audience

Interaction with the NRG

The National Reference Group (NRG) members would be updated periodically of the project progress and would be invited for comments/suggestions on the research findings and outcomes

Role of the NRG

- Act as ‘missionaries’ for the 7Up3 project, spreading awareness about the mission of the project through interactions with key people, nationally and also at the regional level.
- Provide inputs (comments and suggestions) over the discussions on the PCP and the Country Research Document during the NRG meetings
- Help identify ‘training needs’ in the project countries

Involvement of the NRG beyond project:

The NRG list would be incorporated into the CUTS mailing list and discussion groups, for the members to keep themselves abreast with current information on competition from the world over, especially from the developing world

Project Coordination

- CUTS C-CIER: *Overall execution, including project planning and monitoring*
- CUTS Africa Resource Centers: *Regional coordination with partners and other institutions at the regional level*
- CUTS London Resource Centre: *Liaison with Donors and the international community*

Comments on the presentation:

- CUTS is doing a good job and we congratulate CUTS for that. But all of the CUTS projects are based in Asia and Africa. It would be good to learn lessons from the transitional economies of Eastern Europe. At this point we would also want to know if there is any study available to learn something from East European and western countries.

Response: It's a really good observation that you have made. With the latest developments in terms of European Union, Eastern European economies are really doing great. It would be great for us to take some lessons from them. It's a matter for CUTS International to look into.

- Is it politically neutral initiative? Is it not contesting with other institutions like IMF, World Bank etc?
- What sort of structures CUTS has witnessed in past and does it has a clear working structure and how can grass roots organization make any contributions or get involved?

Response: CUTS International is politically neutral. In terms of IMF and World Bank, they have their own policies and procedures. Their main focus is to liberalize economies by privatization and industrialization. But CUTS major focus is Capacity Building of the projects in partner countries.

As far as working structure of CUTS is concerned, as discussed above, it's through project partners, namely Research and Advocacy partners.

Competition Scenario in Botswana



Mr. Monnane Monnane presenting on Competition scenario in Botswana

Experience on Competition Law from Botswana

Introduction and Background

- No competition law
- Policy under development
- 1966 - Dependent mainly on agriculture.
- 1970s – Discovery of diamonds
- Remarkable economic transformation since (avg 9% GDP growth)
- Low rainfall, high temps, drought

Laws and Regulations Affecting Competition in Botswana

- Decided to focus on Laws and Regulations
- The Companies' Act
- The Industrial Development Act
- The Telecommunications Act
- The Public Procurement and Asset Disposal Act
- Consumer Protection Act

The Company's Act

- The first key statute regulating market entry or the establishment of a business in Botswana.
- Review to encourage a competitive or less restrictive commercial environment and would facilitate domestic commercial activity and the flow of foreign investment.
- Explicitly regarding SMMEs

Industrial Development Act

- Regulates entry into manufacturing businesses that are not otherwise regulated by specific pieces of legislation.
- Reserves some manufacturing businesses for citizens (uncompetitive)
- Better to pursue policies like citizen empowerment through measures other than regulation or restriction of entry into certain lines of businesses.

The Trade and Liquor Act

- Regulates entry into businesses for the supply of goods and services, mostly to end-users.
- Licenses have to be renewed within twelve months (Admin burden)
- Minister has powers to suspend, cancel, or withdraw a licence at any time if, in his/her opinion, this is in the interests of the inhabitants of a particular area or of Botswana generally
- Shall not be obliged to furnish reasons for any decision taken by him in terms of this section, and such decision shall be final and shall not be questioned in any court.

Public Procurement and Asset Disposal Act

- Concerned with procurement of works, supplies and services for Government and disposal of public assets.
- Pro-Competition
- 'Fair and equitable treatment of all contractors in the interests of efficiency and maintenance of a level playing field'.
- But; preferential procurement and asset disposal schemes for citizen firms.

Telecommunications Act

- Regulates the provision of telecommunications services.
- Unlike PPAD Act, no profound citizen preference
- More – pro competition
- “Promote and maintain competition among persons engaged in commercial activities for, or in connection with the provision of telecommunications services, and promote efficiency and economy on the part of persons so engaged”
- Overlaps with model Competition Law
- Need for repeal and transfer competition issues to the competition authority

Consumer Protection Act

- Consumer protection office

- Investigates “unfair business practices”, and would preside over the settlement of disputes relating to “unfair business practices”.
- Overlaps with model competition law
- Need for repeal and transfer competition issues to the competition authority.

Nature of Market

- Transport sector (CR3⁶ of 65.7 percent).
- Hotel and Restaurants (CR3 of 64.8 percent)
- Agriculture (CR3 of 63.6 percent).
- Manufacturing and Finance sectors (50 and 55 percent.)
- Wholesale and Retail Trade (26.8 percent) and Construction (40 percent).

Competition Policy and Law

- No competition Law
- Competition Policy under development
- Draft provides a framework for preventing anticompetitive practices and conduct by firms and creates a business friendly environment that encourages competition and efficient resource allocation
- To be implemented by Botswana Competition Authority.
- Independence and insulation from external interference.
- Transparency and well designed administrative mechanisms and regulations.
- Clear separation of investigations of anticompetitive behavior from the application of the Competition Law, prosecutions and adjudication functions.
- Checks and balances with rights of appeal, reviews of decisions, and access to information on legal and economic interpretations.
- Expeditious and transparent proceedings that safeguard sensitive business information.
- Provisions for imposing significant penalties.

Interface between Competition and Economic Regulation

- Financial Services
 - ✓ Regulated and supervised by the Central Bank, the Bank of Botswana under the 1995 Banking Act.
 - ✓ Entry into this sector by foreigners is largely unrestricted.
 - ✓ No discriminations between local and foreign banks.
 - ✓ Entry into this market is encouraged through a 15% tax incentive, 10% lower than the prevailing 25% corporate tax, up to the year 2020.
- Power Sector
 - ✓ Dominated by a monopoly government owned Botswana Power Corporation (BPC).
 - ✓ Legally, any operator can generate electricity and sell at a price lower than that of the BPC.

⁶ CR: Competition Ratio. CR3 implies the total percentage of sale made by top 3 firms in the sector

- ✓ Take into consideration, the existing or future plans of BPC with regard to the generation and supply of electricity for Botswana, giving precedence to the interests of the BPC (anti competitive).
- The Construction Sector
 - ✓ Regulated by the PPADB.
 - ✓ In terms of registration, the construction sector is quite liberal.
 - ✓ In terms of contracts awards, citizen contractors are given better incentives as compared to their foreign counter parts.
- Regional Integration
 - ✓ The New Southern African Customs Union (SACU), requires that members have a competition policy (Article 40).
 - ✓ The Southern African Development Community (SADC) also recognizes the importance of a regional Competition Policy, but is yet to develop one.

Conclusions

- ✓ No Competition Law
- ✓ But opportune time
 - Lack of understanding of competition issues in general
 - Thankful to CUTS and hope for the best out of the project.

Comments and Questions from the presentation:

Participants raised the following questions and comments:

- ✓ Participants felt uncomfortable on the fact that there is no government policy in terms of citizen's empowerment so that citizens could be empowered with the knowledge of competition and consumer laws. They also shared the same feeling for the fact that there is no policy in terms of Research and Development.
- ✓ The questions were also raised in terms of differentiation of working line between Competition Policy board and Sector Regulatory bodies e.g.: Telecom Regulatory Authority takes care of telecom related issues, so there should be a proper working understanding between the both parties.

Mr. Chansa suggested that there should be a division of expertise between the two bodies. As for example, License issues, issues of rights etc. should be taken care by Sector Regulatory bodies. All the policies related to competition and market regulations should be taken care of by the Competition Policy board.

- ✓ The issue of Genetically Modified crops was also raised. In Botswana there is no legislation in terms of this. 30% of maize produced in South Africa is genetically

modified and Botswana imports it. The competition policy law should provide measures to safeguard the interests of small farmers.

- ✓ We should also look into ground realities and at the capacity of the citizens. Do they have the capacity to compete with the rest of the world in an open market? E.g. look at EU, along with economic empowerment; they are also building capacity of their people. Therefore we as a country, have to look upon these matters so that we progressively move ahead.
- ✓ A lot of questions were raised on Citizen Preferential Treatment policy by the government. People wanted to know if this is not a violation of the competition laws. In response Mr. Monnane said that we need to put a lot of thought into this matter. In his views, many times the philosophy of Citizen Preferential Treatment causes more trouble than benefit. That is why he suggested Citizen Partnership instead of preferential treatment.
- ✓ There should also be some clauses in the policy which protects and safe guards interests of indigenous small scale producers and farmers. There should also be some realization for new and upcoming businesses.
- ✓ Corporate Social Responsibility should be an integral part of the policy. In clear terms the corporate sector should be aware of the fact that they have to repay back to the society what they have made from it. Also, civil society is struggling for resources; this would add some sustainability into the system.
- ✓ Participants wanted to know about the issue of dumping of foreign goods in Botswana. They suggested that there should be something included in the policy about this. The issue of natural resource exploitation was also a concern.
- ✓ A participant suggested that the Competition Authority should not be founded by the government. In the era where government practically owns every authority on governance at their discretion, it might not serve the purpose and may not play unbiased role in the implementation. Ministers with practically no technical expertise are given powers to administer important and crucial departments.
- ✓ Questions were also raised on the vehicles coming from the Middle East in Botswana market. These vehicles are cheap and are readily available. People go for them as they are cheap and provide value for money. On the other hand most of these vehicles are dumped in Botswana, which is not justified as we are being given low quality and outdated products. How would this be covered under competition laws?

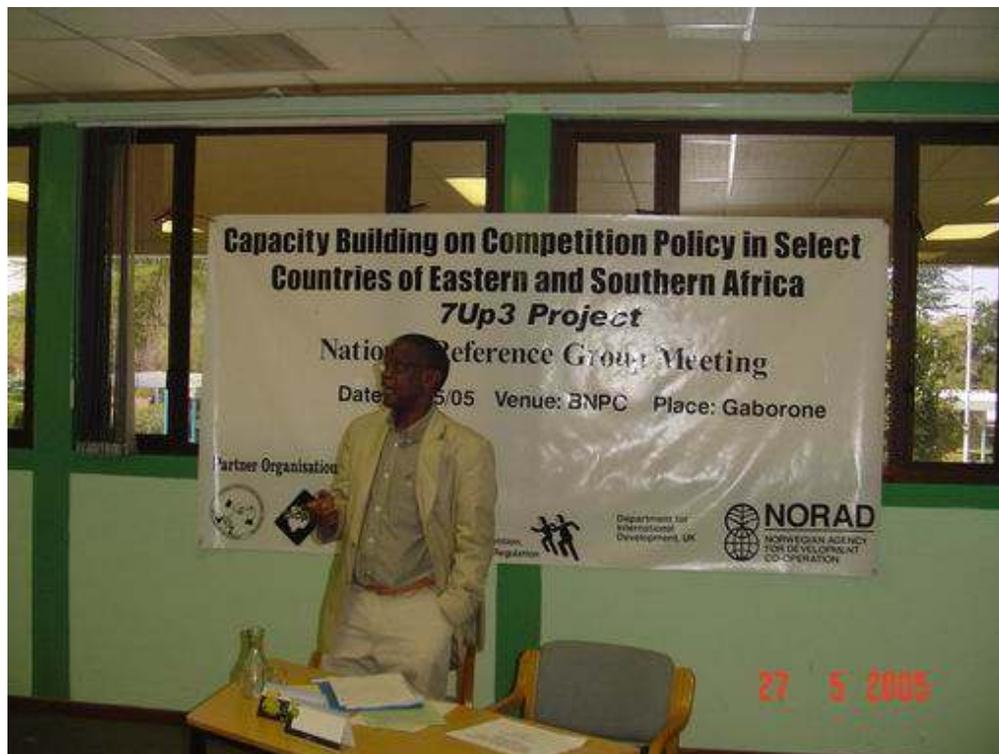
Mr. James Chansa made it clear that forming a competition policy and making market more competitive should not be mistaken with just opening of the market. In real terms it means regulating the market in a proper and organized manner. He also suggested that the ministers with unchallenged powers should be held

accountable and should be questioned and brought to the forums like this and interrogated. Just letting them loose is not good for a competitive market.

After the discussion, Mr. Mogotsi thanked the participants and informed them that more people will be brought on board like Trade Unions, Politicians, Cabinet Ministers and more civil society organizations. BOCONGO wants to get everyone on board so that it can make the maximum impact.

Vote of Thanks

In his vote of thanks Mr. Maphanyane from MISA Botswana thanked the participants, CUTS and BOCONGO for providing this opportunity to form Botswana Competition Policy national reference group (NRG). He specially thanked Mr. James Chansa of CUTS-AR Zambia for taking his precious time to come over and enlighten the participants on CUTS and its activities. He also pointed the fact that Zambia has always been an ally of Botswana and there is this huge scope for both countries to learn from each other. He requested the participants to continue with the thinking process and come up with a policy which is just, fruitful and productive to all stakeholders. He also thanked Mr. Monnane Monane of BIDPA for sharing his research on Competition scenario in Botswana. In the end he laid emphasis on the fact that we can drive growth and results if we put all the stakeholders on board and move together for a common cause.



Mr. Maphanyane from MISA Botswana delivering vote of thanks

Snapshots



(Session Chairperson: Mr. B.Mogotsi)



(Participants during the meeting)



(Chairperson with facilitators)

From right: Mr. James Chansa, Mr. B. Mogotsi and Mr. Monnane Monnane)

List of Participants

	Name	Organisations	Telephone	Email Address
1.	Lorato Moalusi Sakufiwa	Women's Shelter Project	3900516/ 3907659	kwsp@info.bw
2.	Mompati Monnawatlala	BOCONGO	3911319	mmonnawatlala@yahoo.com
3.	Patrick Reuben	BOCONGO	3911319	pphri2005@yahoo.co.uk
4.	Keeper Morgan	Botswana Bureau of Standards	3903200	k_morgan@bobstandards.bw
5.	Monnane Monnane	BIDPA	3971750	monnanem@bidpa.bw
6.	Boitshepo Chube	University of Botswana		boitschube@yahoo.co.uk
7.	Maipelo Mogotsi	University of Botswana		Maptwiggy83@yahoo.com
8.	Christopher Mogenne	Niversity of Botswana	72475916	chrismogenela@yahoo.com
9.	Sebilo Valley Motlhaping	Botswana Teachers Union	71387228	
10.	Moweu Simane	Botswana Council of Churches	3951981	Bots.christ.c@info.bw
11.	Baatlodi Molatlhegi	Molatlhegi & Associates	3938793	molatlhegiass@info.bw
12.	Paul Mosimanegape	Tshwaragano Brigades	3947058 71621924	tbdt@botsnet.bw
13.	James Chansa	CUTS-ARC-Lusaka	2601224992	cutsarc@zamnet.zm
14.	Motlhaleemang Ntebela	Mmegi Publishing Trust	3952464 3184977 (F) 71312123	ntebela@megi.bw
15.	Kelly Murphy	Somarelang Tikologo	3913709	kmurphy@somatiko.co.bw
16.	Tlanelo Selaledi	Somarelang Tikologo	3913709	tseleledi@somatiko.co.bw
17.	Tebogo Sebogodi	Botswana Federation of Secondary School Teachers	3937472/3	tsebogodi@yahoo.com
18.	Phillimon Simwaba	Develoment Initiatives and Services	3163330	psimwaba@mega.bw
19.	Barulaganye Mogotsi	BOCONGO	3911319	mogotsib@bocongo.org.bw
20.	Baboloki Tlale	BOCONGO	3911319	tlaleb@bocongo.org.bw
21.	Modise HD Maphanyane	MISA Botswana	3971972	misa@info.bw
22.	K. Moletsane	AEET	71678113	Kmoletsane04@yahoo.co.uk
23.	M. Setlhake	BOCONGO	3911379	bocongo@bocongo.bw

Workshop Program

Botswana Competition Policy National Reference Group Meeting

Friday 27th May 2005

Botswana National Productivity Centre (BNPC)

Session Chairperson: Mr. Barulaganye Mogotsi (Programmes Manager BOCONGO)

0900-0920: **Registration**

0920-0930: **Welcome Remarks-** Mr. Baboloki Tlale (BOCONGO Executive Secretary)

0930-1030: **7Up3 and role of NRG-** Mr. James Chansa (CUTS Zambia)
: **Open Discussion**

1030-1100: **Tea Break**

1100-1200: **Competition Scenario in Botswana-** Mr. Monane Monnane (BIDPA)
: **Open Discussion**

1200-1230: **Identification of Policies, Laws, Regulations and Practices that affect competition in the market**

1230-1245: **Vote of Thanks-** Modise HD Maphanyane (MISA Botswana)

1300: **Lunch**