

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

UNCTAD



**External Evaluation of Development Account Project 10110-
Strengthening Capacities in Developing Countries for the Effective
Enforcement of Competition Law to Minimize Constraints to Economic
Productivity***

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ABBREVIATIONS

ADB	Asian Development Bank
AMCU	Antimonopoly Commission of Ukraine
COMPAL	technical assistance programme on competition and consumer protection for Latin America
COMESA	Common Market for Eastern and Southern Africa
CSO	Civil Society Organization
CTC	Competition and Tariff Commission (Zimbabwe)
CCP	Competition Commission of Pakistan (CCP)
CPC	Competition Protection Commission (Serbia)
DESA	United Nations Department of Economic and Social Affairs
DAC	Development Assistance Criteria
DA	Development Account
EA	Expected Achievement
FCC	Fair Competition Commission (FCC)
FAS	Federal Anti-Monopoly Service of Russia
GCI	Global Competitiveness Index
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
ICN	International Competition Network
IFC	International Finance Corporation
IMF	International Monetary Fund
IGE	Intergovernmental Group of Experts on Competition Law and Policy
KII	Key Informant Interview
KPPU	Komisi Pengawas Persaingan Usaha (competition Authority in Indonesia)
NGO	Non-Governmental Organization
OECD	Organization for Economic Cooperation and Development
OFT	Office of Fair Trading (UK)
PD	Project Document
PRSP	Poverty Reduction Strategy Paper
SECO	Swiss Economic Cooperation Office
SOE	State-Owned Enterprises
SCPEC	State Commission on Protection of Economic Competition (Armenia)
SADC	South African Development Cooperation
TA	Technical Assistance
TIKA	Turkish International Aid Agency
UNDP	United Nations Development Program
UNCTAD	United Nations Conference on Trade and Development
WB	World Bank
WTO	World Trade Organization

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The opinions expressed in this report are those of the author and might not necessarily reflect those of the UNCTAD Competition Law and Policy Unit team.

EXECUTIVE SUMMARY

The project implemented by the United Nations Conference on Trade and Development (UNCTAD), entitled: “*Strengthening the capacities in developing countries for the effective enforcement of competition law to minimize constraints to economic productivity*” was completed in December 2013. The current external and independent evaluation is commissioned by the UNCTAD Evaluation Office in compliance with the requirements of the Development Account (DA), which supports this project. The project has been executed by UNCTAD, in collaboration with relevant national stakeholders including the national competition authorities and ministries of trade.

The objective of UNCTAD's work on competition policies is to ensure that partner countries enjoy the benefits of increased competition, open and contestable markets, private sector investment in key sectors and ultimately that consumers achieve improved welfare. A country's competition framework can play a direct and important role in promoting economic growth and reducing poverty. However, anticompetitive practices are common, and the developing economies are particularly vulnerable. Competition policy aims to overcome this anticompetitive environment by applying a set of market rules that guarantee a level playing field for all businesses. The successful implementation of competition policy results in the elimination of anticompetitive regulation and unnecessary barriers to competition imposed by government policies.

To this end, the objective of this project being evaluated is to strengthen the capacity of national competition authorities to effectively enforce competition law and to make recommendations for the improvement of their legal and institutional frameworks. In order to achieve this objective, the project involves the following activities: producing a Peer Review report for each beneficiary country; organization of a Peer Review round table discussion at a session of the Intergovernmental Group of Experts (IGE) on Competition; national seminars to disseminate the results and recommendations of the Peer Review; awareness and capacity-building workshops; and study tours.

The project covers a period of four years during which four countries were initially targeted for review, but at the close of the project (12/2013), 14 countries have been involved in the project. This includes 9 Peer Reviews that have been completed, and 3 Peer Reviews that have been initiated. In addition, follow-up activities to implement Peer Review recommendations were undertaken in 2 countries, Kenya and Indonesia, which were Peer Reviewed in 2005 and 2009, that is, outside the period of this project. Some of these additional activities have been enabled in part by the ability to attract additional funding from bilateral donors. The fact that there were more requests for Peer Reviews was also of course a key contributing factor.

The purpose of the evaluation is to assess, systematically, objectively and credibly the project framework and design, project management, and project performance. The available information and resources for this evaluation are not sufficient to assess credibly the project's longer term outcomes and impact. Therefore the scope of this evaluation is restricted to cover short-and medium term outcomes only. The evaluation aims at drawing conclusions, make recommendations and identify lessons learned from the implementation of the project covering such questions as: what has been successful and can be replicated elsewhere;

shortcomings and constraints in the implementation of the project while, at the same time, identifying the remaining challenges, gaps and needs for future courses of action; etc.

The evaluation used a mixed-method approach to triangulate all available data sources to reach conclusions and findings. It included the following: desk review of relevant project documents, relevant strategies and laws of the countries which were beneficiaries of the Peer Review process, and third party reports (e.g. reports produced by international donor community, local and international research centers), face-to-face and telephone interviews with relevant UNCTAD staff; telephone/skype interviews with direct beneficiaries and other relevant stakeholders; a survey of competition agencies and international experts familiar with UNCTAD Peer Review process; and content analysis of Peer Review reports and other deliverables of the project. Traingulation was used to verify the information gathered from the document reviews and interviews.

6 countries were chosen for in-depth study. These are: Serbia, Nicaragua, Indonesia and the 3 countries in Africa under the tripartite review, namely Tanzania, Zambia and Zimbabwe. The choice of these countries was based on the following criteria: geographical diversity; typology (e.g. the tripartite review aiming to stimulate regional cooperation); and the maturity of the project (time lapsed after the completion). In-depth review included key informant interviews by telephone/skype with projects' stakeholders to assess the project results in greater detail; the list of stakeholders interviewed included not only the competition agencies but also other agencies and organizations, e.g. consumer protection bodies, NGOs, judiciary, etc.

Relevance and project design

The project was highly relevant for the countries which received the assistance. All of them suffer from underdeveloped competition frameworks and human capacity constraints. The voluntary nature of the Peer Review process reinforces the relevance of the project. Competition protection is declared as a priority area for action if not by all then by most of the countries. Even if these statements are in many cases mostly declarative, the Peer Review processes helped the competition authorities to advocate for effective changes in the legal frameworks and appreciate the role of competition policies for the overall development of the countries. All of the components of the Peer Review processes were relevant: the Peer Review reports per se and the follow up technical assistance and dissemination events. Thus the intervention logic is coherent, but perhaps some adjustments need to be made related to the weight attached to the follow up assistance in the overall package of the Peer Review process, since the need for technical assistance is much more than is on offer, and to the conditions based on which it is provided. The need for technical assistance far exceeds however what could be afforded by the project budgets, and hence other avenues of its provision should be more vigorously explored. The project is also squarely in line with the objectives of the Development Account, the main funding source.

Effectiveness

The project has been very successful in many regards. The Peer Review process of competition laws and policies in developing countries has been hailed for its competence and delivering practical recommendations with clear roadmaps for the countries. The capacities of the competition authorities were built in terms of (a) equipping them with a high quality analysis of their competition protection frameworks, as well as (b) through the follow up assistance, wherever this was available.

The competition authorities were very or mostly satisfied by the Peer Review process, highly appreciating the quality of the assistance (reports, training) and using the products delivered much beyond the projects in individual countries end. As an example, the Peer Review reports are used for years as reference points both for legal reforms and for training.

The competition authorities were mostly effective in terms of acting upon the recommendations, initiating changes in the laws and procedures. Most of the latter were however in the process of review by the national parliaments at the time of writing this report. One of the lessons that could be learnt from UNCTAD Peer Reviews is that the reforms in the field of protection of economic competition take time and this understanding should be built into potential similar programs. Overall however, the competition climates have improved in 10 out of 12 reviewed countries, and UNCTAD Peer Review processes have undoubtedly contributed to this.

In terms of strengthening the effectiveness of the competition authorities in implementing the improved and existing legislation, the picture is somewhat mixed. There are clear leaders, and here the UNCTAD review processes have indeed played a contributory role, but part of the countries which had improved their competition climate overall, i.e. more in terms of improvements in the legal frameworks, are falling short of the expectations in terms of enforcement. Some of the reasons of this include: (a) much larger needs in reforming the legislation in related areas as well as secondary legislation; (b) unfavorable policies of the governments in related areas (e.g. policies related to procurement, SOEs, and regulated sectors); (c) high level of corruption; (d) financial and human resource constraints of the competition authorities, etc.

The level of ownership of the countries was overall high, but to be even more successful in terms of seeing reforms getting actually implemented more speedily and effectively, there should be more interconnectedness with other policy reforms being supported by other development partners.

The Peer Review process in some countries, which have proved to become the “leaders” in their respective regions, had impacted the desire of the neighboring countries to catch up, with some of the experience sharing happening in the course of the projects. With the Tripartite Review for Zambia, Zimbabwe and Tanzania, UNCTAD Peer Review process has proved to have the potential to contribute to regional cooperation in the field of protecting economic competition. There were also cases whereby guidelines developed in one country have been used in other countries of a different region. With these examples, the Peer Review process has proven to be a dynamic exercise able to generate multiplicative and spillover effects.

Thus regarding the Expected Achievements (EA), the evidence collected in this evaluation points to the following:

- Policy makers were enabled to address the weaknesses in the sphere of the protection of economic competition and promote best standards equipped with better information base thanks to the improvements in the legal environment; and
- Judged by the feedback collected in this evaluation, policy makers were enabled to better understand the strengths and weaknesses of the competition policy and legislation regimes and the recommendations for their improvement as a result of the technical assistance they received (training and seminars) in those countries where the

technical assistance was delivered: this is based on self-reports however and it is not feasible to independently verify these claims under the current evaluation.

The project has made a notable progress towards its overall objective (medium term outcome) in terms of strengthening the capacity of national authorities to effectively enforce competition law. The translation of the increased capacity to effectively enforce competition to actual improved enforcement however, happens to a varying degree, since it is influenced by myriad of other factors

Efficiency

The project was implemented without any delays; the only delays are observed in mobilizing funding from the development partners for the technical assistance in some countries, but this reflects not on the work of the UNCTAD team but on the funding cycles and procedures of various international organizations.

The project was planned initially to cover 4 country Peer Reviews and ended up covering 12 countries as more requests were submitted by the countries for Peer Reviews and more funding became available from other funding agencies (SECO and GIZ in particular). In addition, follow-up activities were covered by the project for 2 countries, Kenya and Indonesia. Also, many other agencies funded/co-funded specific activities, e.g. seminars, costs of an experts as reviewers, etc. This increased funding from development partners is the best indication proving the appreciation of UNCTAD Peer Review process by the development community. While individual country reviews processes are cost effective achieving high quality outputs with rather limited funding.

There do not seem to be major concerns in terms of duplication of the work between UNCTAD, ICN and OECD; rather their efforts are complementary.

Sustainability

For many countries the Peer Reviews added the necessary clout for the nascent competition authorities in terms of dealing with their own governments getting the latter appreciate more the role of competition policies. This is an important building block in terms of securing the sustainability of the Peer Review process outcomes. Such awareness is yet to translate into increased funding for the competition authorities. One of the main challenges faced by the competition authorities in developing countries is underfunding. These financial constraints affect their ability to implement recommendations, hire and retain qualified staff. A number of expert-practitioners interviewed for this evaluation thought that commitment by the governments to increase the funding for the competition agencies should become part of the conditions for rendering more in-depth technical assistance under the UNCTAD Peer Reviews.

Strong external factors serve as important push factors supporting both the effectiveness of the reforms and the prospects of sustainability. Serbia's case is such an example, where the EU membership aspirations have helped the implementation of most of the UNCTAD Peer Review recommendations and have also generated substantial funding from the EU for the follow up assistance.

The likelihood for the sustainability for of the assistance provided is high but of course depends on many factors and the political realities in particular. More emphasis on building partnerships between the competition authorities from developing and developed countries

could be one of the avenues which will help in terms of increasing the likelihood of sustainability.

Key Recommendations

- Coordinate with other International Organizations to be able to add leverage in the pursuit of policy reforms;
- More focus on training and technical capacity building is very important: the package of a more in-depth technical assistance has to be provided only if there is a clear commitment by the governments to implement the recommendations, including in terms of increased funding for the agencies;
- Support “mentoring” partnerships between the competition authorities from developing and developed countries, involving other agencies as key allies and partners in the Peer Review process. This could potentially create a sense of support and mentorship between agencies, which in the medium to long term could provide additional support;
- Incorporate a stage in the Peer Review process whereby the countries will report back to the IGE in 2-3 years' time after the assistance package is over. This will have to be accompanied by an independent review of the achievements as well as a self-report by the competition authorities concerned;
- Aim to distribute the Peer Review reports more widely in the countries ensuring that it reaches a wider circle of journalists, civil society groups and consumer unions; and
- Work together with the development partners (international organizations) to ensure that the delivery of the technical assistance, often funded outside the core funding for the Peer Review reports *per se*, is not delayed for too long, since it affects the expectations and perceptions of the competition agencies being assisted and may ultimately affect the effectiveness of the Peer Review process overall.

1. INTRODUCTION AND THE PURPOSE OF THE EVALUATION

The project implemented by the United Nations Conference on Trade and Development (UNCTAD), entitled: “*Strengthening capacities in developing countries for the effective enforcement of competition law to minimize constraints to economic productivity*” was completed in December 2013. The current external and independent evaluation is commissioned by the UNCTAD Evaluation and Monitoring Unit (EMU) in compliance with the requirements of the Development Account (DA), which supports this project. The purpose of the evaluation is to assess, systematically, objectively and credibly the project framework and design, project management, and project performance.

The evaluation is expected to conclude with practical and constructive recommendations in order to enhance the work of UNCTAD in this area. The primary audiences of the evaluation report are UNCTAD management and programme officers, the Capacity Development Office/Development Account of DESA, project stakeholders, UNCTAD's member States and other stakeholders.

2. BACKGROUND

The objective of UNCTAD's work on competition policy is to ensure that partner countries enjoy the benefits of increased competition, open and contestable markets, private sector investment in key sectors and ultimately that consumers achieve improved welfare.

A country's competition framework can play a direct and important role in promoting economic growth and reducing poverty. However, anticompetitive practices are common, with two root causes:

- Business conduct that restrains competition. This includes agreements between businesses not to compete (which are typically illegal), through cartels, price fixing and territorial divides for example. Businesses may also make formal, legal groupings such as marketing boards and cooperatives, which can in effect operate as cartels; and
- Government policies that burden competition. Governments often have restrictive licensing regimes for certain sectors and products, such as for agricultural inputs (e.g. seeds and agrochemicals).

Developing economies are particularly vulnerable to anticompetitive practices, as:

- poor business infrastructure and complex regulatory and licensing regimes make it harder for companies to enter these markets;
- their policies, laws and regulations are often not sufficiently robust, while their enforcement agencies lack the capacity to effectively detect and tackle many instances of anticompetitive behavior; and
- the citizens and businesses are less aware of the importance of competition and do not exercise their rights or fulfill their responsibilities.

Competition policy aims to overcome this anticompetitive environment by applying a set of market rules that guarantee a level playing field for all businesses. The successful implementation of competition policy results in the elimination of anticompetitive regulation

and unnecessary barriers to competition imposed by government policies. To this end, the objective of this project being evaluated is to strengthen the capacity of national competition authorities to effectively enforce competition law and to make recommendations for the improvement of their legal and institutional frameworks.

The project covers a period of four years during which four countries were initially targeted for review, but at the close of the project (12/2013), 14 countries have been involved in the project. This includes 9 Peer Reviews that have been completed (countries: Armenia (2010); Serbia (2011); Mongolia, Tanzania, Zambia and Zimbabwe (2012), Nicaragua, Pakistan and Ukraine (2013)), and 3 Peer Reviews that have been initiated (countries: Seychelles (initiated in 2012) and Namibia and the Philippines (initiated in 2013)). In addition, follow-up activities to implement Peer Review recommendations were undertaken in 2 countries, Kenya and Indonesia, which were Peer Reviewed in 2005 and 2009, respectively. Some of these additional activities have been enabled in part by the ability to attract additional funding from bilateral donors to undertake more Peer Reviews based on the results of earlier work.

The project has been executed by UNCTAD, in collaboration with relevant national stakeholders including the national competition authorities and ministries of trade. The PD (p.12) spells out its intended medium and longer term outcomes and impact (p.12) as well as assumptions.

The Project “strategy” as described in the PD is not its Results chain however: in other words it does not describe the project logic along the logframe (outputs, outcomes and impact), as well as the interrelations and underlying assumptions. To summarize, the project anticipated the realization of two immediate Outcomes, namely

- **EA1:** *Policy makers enabled to better understand strengths and weaknesses of the country competition policy and legislation and the recommendations for their improvement; and*
- **EA2:** *Policy makers enabled to address the weaknesses and promote best standards.*

The overall objective of the project (medium term Outcome) is to *strengthen the capacity of national authorities to effectively enforce competition law.*

Using the information from Error! Reference source not found. and Error! Reference source not found., an attempt is made in Figure 1 **Error! Reference source not found. to reconstruct** its Results Chain. Long term expected Outcomes of the project are: higher rate of voluntary compliance to competition law and better/more effective enforcement of competition law with the view of eliminating anticompetitive business practices, which would in turn encourage investments in the economy, reduce impediments to business activity, improve the quality of products and service and bring prices close to marginal costs. The anticipated impact of the project is increased consumer welfare and contribution to poverty reduction.

Figure 1: Project strategy- objectives, expected accomplishments, indicators of achievements and strategy, as in the Project Document

Figure 2: The objectives of the Project according to PD

borrows from the Project Document (PD hereafter) describing the Activities, Outputs and the Objective of the Project. The PD (p.12) spells out its intended medium and longer term outcomes and impact (p.12) as well as assumptions.

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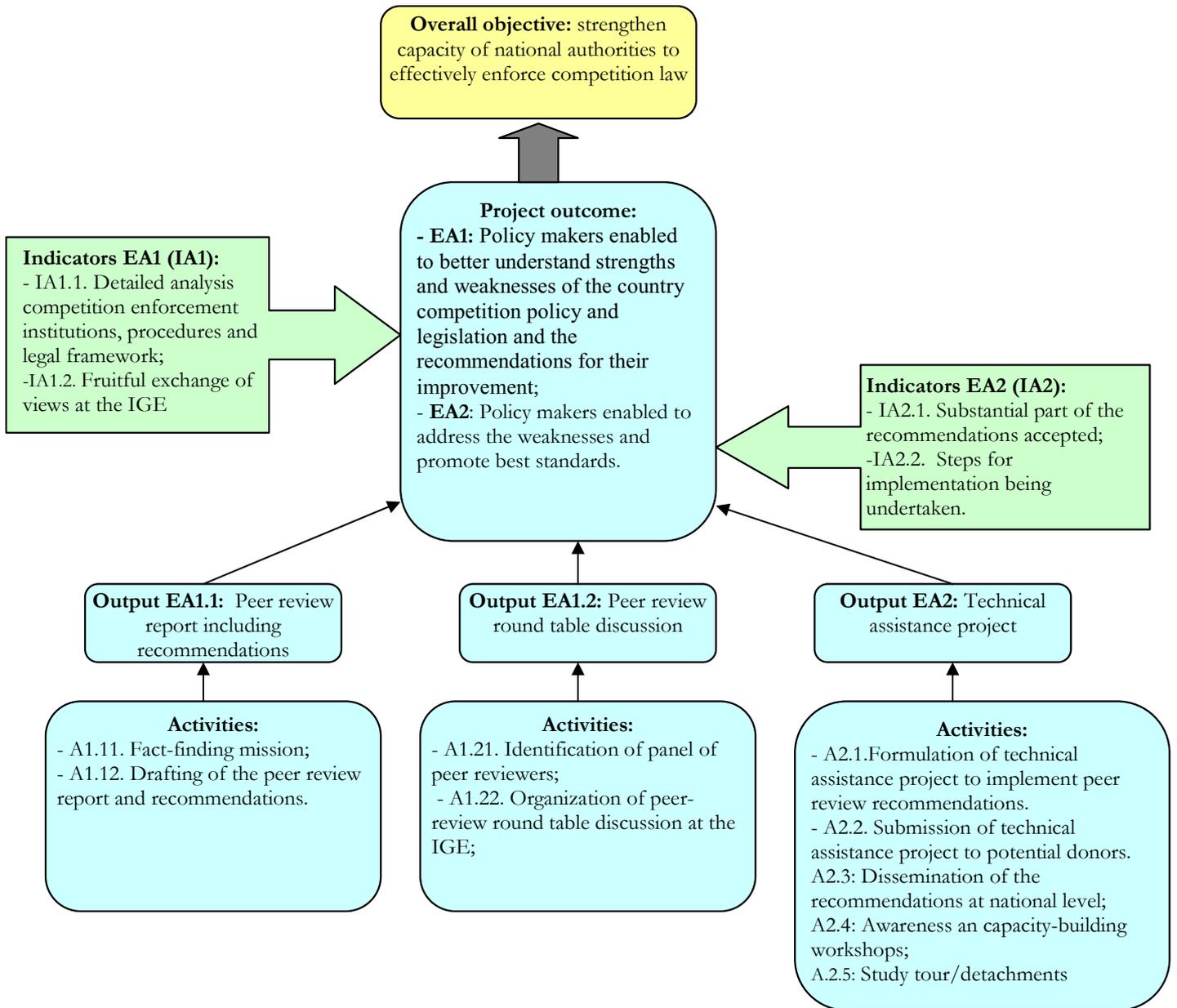
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Figure 1: Project strategy- objectives, expected accomplishments, indicators of achievements and strategy, as in the Project Document

Figure 2: The objectives of the Project according to PD



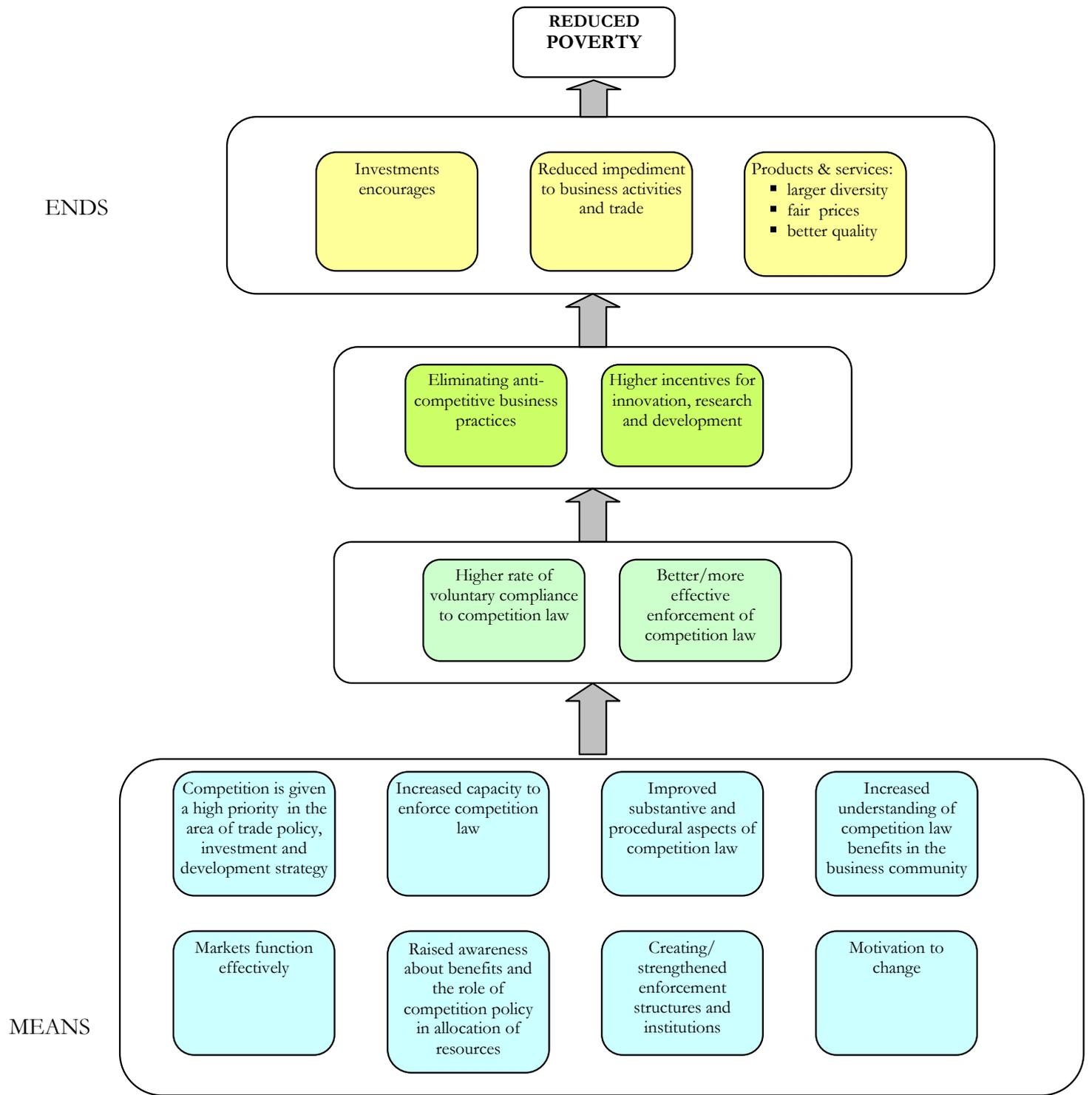
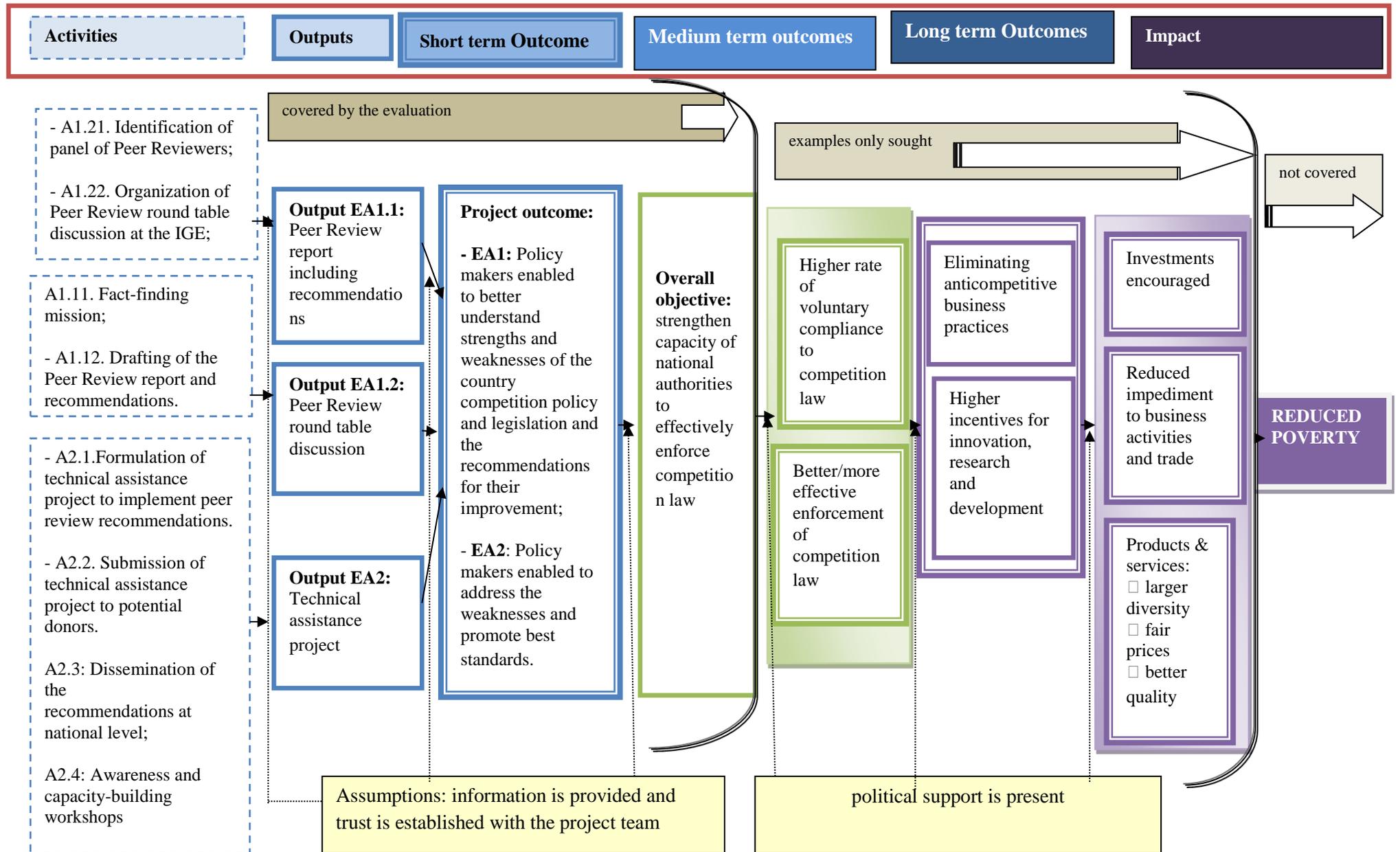


Figure 1: Reconstructed Results chain for the Project



3. SCOPE OF THE EVALUATION

The available information and resources for this evaluation are not sufficient to assess credibly the project's longer term outcomes and impact. Therefore a decision was made during the initial meetings at UNCTAD with the Evaluation Team to restrict the scope of the evaluation to cover short-and medium term outcomes, and cover longer term outcomes only as case studies, provided that such examples are made available during the evaluation process (see Figure 1).

In line with the TOR the evaluation considers all activities that have been implemented under the project and addresses the following issues:

a) Relevance and project design

- Whether the project design and choice of beneficiaries reflected and addressed the needs of the beneficiaries, taking into account UNCTAD's mandates, and alignment with the objectives of the Development Account; and
- Is the intervention logic coherent and realistic? What needs to be adjusted? How well do they link to each other?

b) Effectiveness

- To what extent does the project contribute to the objective of strengthened capacity of national authorities to effectively enforce competition law?
- To what extent are project stakeholders satisfied with the quality of the outputs? Have the countries used the reports/outputs produced? How? and
- Have there been any unintended (positive or negative) outcomes of the project? What were the main factors influencing the outcomes of the projects?

c) Efficiency

- Were the activities carried out within the foreseen timeframe? If not, what led to the delays? and
- Have project management and implementation modalities been adequate?

d) Sustainability

- Have the project activities been designed and implemented in such a way to ensure maximum sustainability of their impact, for instance, whether beneficiary country stakeholders and development partners were actively involved in the initiation, design and implementation of the project; and
- To what extent do the national counterparts assume ownership of the Peer Review process and report and have the capacities and willingness to continue the necessary follow-up actions?

The evaluation, on the basis of its findings and assessments made on the above criteria, draws conclusions, makes recommendations and identifies lessons learned from the implementation of the project. More specifically, the evaluation:

- Highlights what has been successful and could be replicated elsewhere;

- Indicates shortcomings and constraints in the implementation of the project while, at the same time, identifying the remaining challenges, gaps and needs for future courses of action;
- Makes pragmatic recommendations to suggest how UNCTAD's work in this area can be strengthened in order to deliver better results; and
- Draws lessons of wider application for the replication of the experience gained in this project in other projects/countries.

4. METHODOLOGY AND EVALUATION FRAMEWORK

The evaluation uses a mixed-method approach to triangulate all available data sources to reach conclusions and findings. It includes the following:

- Desk review of relevant project documents;
- Desk review of relevant strategies and laws of the countries which were beneficiaries of the Peer Review process;
- Desk review of third party reports (e.g. reports produced by international donor community, local and international research centers);
- Face-to-face and telephone interviews with relevant UNCTAD staff;
- Telephone interviews with direct beneficiaries and other relevant stakeholders;
- Surveys of project stakeholders and international experts familiar with UNCTAD Peer Review process; and
- Content analysis of Peer Review reports and other deliverables of the project.

The competition agencies of 13 countries were surveyed with a questionnaire (see Annex 2). Responses were received from 12 countries (Tanzania, Zambia, Zimbabwe, Serbia, Nicaragua, Indonesia, Ukraine, Seychelles, Mongolia, Pakistan, Namibia and Armenia); no response was received from Philippines.

The questionnaire was sent also to the government agencies which have some role in developing competition policy, but no responses were received from them for various reasons: in some countries policy making resides at the same competition agencies (e.g. Nicaragua); in many of these countries there were personnel changes at the ministries and there was no one with the institutional memory about the project; in a number of countries the ministry representatives felt that they have not much to add to the responses given by the representatives of the competition authorities; and in some countries the representatives simply refused to comment citing their concern that their responses would reflect their personal opinions which might not reflect the official position of the ministry.

Since these countries are at different stages vis-à-vis the project, the representatives from the competition authorities from various countries were asked to complete only parts of the questionnaire (e.g. the countries where the projects are ongoing completed only the questions on Relevance and Efficiency)

6 countries were chosen as a result of joint discussions at UNCTAD on December 2, 2013 for in-depth study. These are: Serbia, Nicaragua, Indonesia and the 3 countries in Africa under the tripartite review, namely Tanzania, Zambia and Zimbabwe. The choice of these countries

was based on the following criteria: geographical diversity; typology (e.g. the tripartite review aiming to stimulate regional cooperation); and maturity of the project (time lapsed after the completion). In-depth review included key informant interviews (KIIs) by telephone/skype with projects' stakeholders to assess the project results in greater detail. The list of stakeholders interviewed included not only the competition agencies and ministries (policy makers) but also additional agencies and organizations, e.g. Consumer protection bodies, NGOs, judiciary, etc. 7 interviews overall were conducted with representatives from 6 countries. The nature of the entities interviewed for each country differed, depending on the willingness to participate in an interview. Although requests for interviews were sent to 3-4 entities in each of the 6 countries, only 1-2 in a given country agreed or found time to participate. Separate interview guides were developed for these interviews (see the template in Annex 3).

An additional survey was conducted among the prominent competition experts who are well familiar with UNCTAD Peer Reviews (see Annex 2), as well as revisers who were engaged during the IGE meeting (Intergovernmental Group of Experts on Competition Law and Policy) and contacts in partner agencies (ICN, OECD, WB), as well as donor agencies (GIZ and SECO). The purpose of this survey was to gauge opinions about the Peer Review process itself, and recommendations for change. 6 interviews were conducted and 3 more people responded through written replies to the questionnaire.

Table 1 summarizes the evaluation questions mapped against the sources of information, methods and tools of data collection and examples of indicators.

Traingulation was used to verify the information gathered from the document review, responses to the questionnaires and the interviews. It involves developing the reliability of the findings through multiple data sources of information (see Figure 2) bringing as much evidence as possible into play from different perspectives in the assessment of hypotheses and assumptions. In the assessments of the outcomes an attempt was made to attribute the results to the program when feasible: when not feasible, **contribution analysis** was used, which is presented schematically below (see Figure 3)¹

Figure 2: Method of Triangulation

¹ based on John Mayne, "Addressing Attribution Through Contribution Analysis: Using Performance Measures Sensibly", The Canadian Journal of Program Evaluation Vol. 16 No. 1 Canadian Evaluation Society, 2001

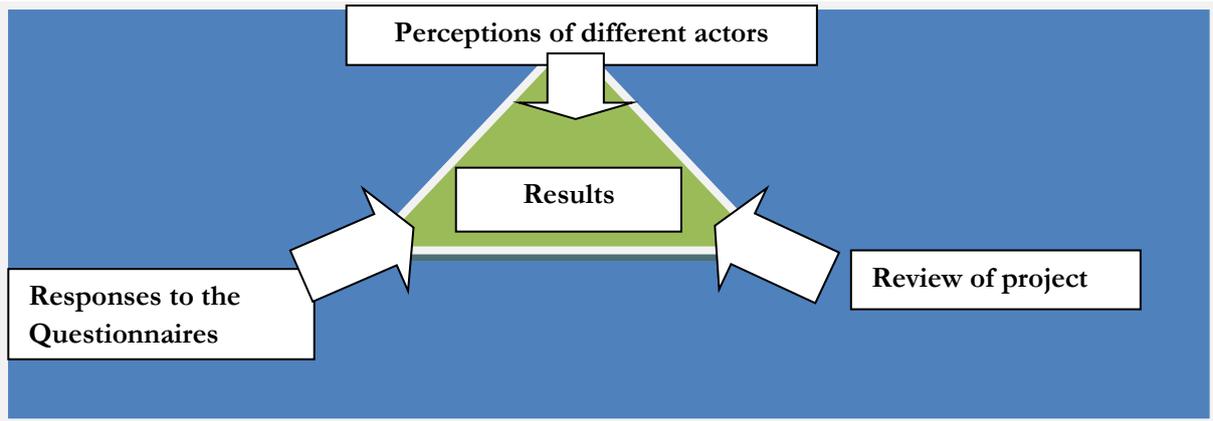
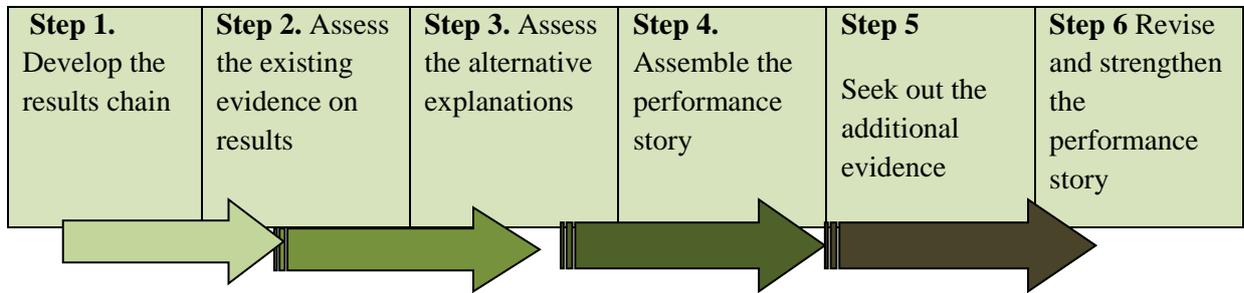


Figure 3: Steps in Contribution Analysis



The evaluation was conducted in a consultative manner, in discussions with and soliciting feedback from the project team at UNCTAD.

Table 1: Matrix of evaluation criteria and questions, data sources and collections methods and indicators

	Evaluation Criteria and Questions	sources of information	methods of data collection	Examples of indicators
	<i>Relevance and project design</i>			
1	Whether the project design and choice of beneficiaries reflected and addressed the needs of the beneficiaries, taking into account UNCTAD's mandates, and alignment with the objectives of the Development Account;	<ul style="list-style-type: none"> • Survey of Competition agencies, KII (in 6 case study countries) • project documents • 3rd party reports 	<ul style="list-style-type: none"> • Surveys • interviews • Desk review 	<ul style="list-style-type: none"> • Reflection of the competition issues in the PRSPs, overall and sectoral strategies • Correspondence to UNCTAD and DA mandate • Extent of co-funding available from other sources
2	Is the intervention logic coherent and realistic? What needs to be adjusted? How well do they link to each other?	<ul style="list-style-type: none"> • Survey of Competition agencies, KII (in 6 case study countries), survey of experts • project documents • 3rd party reports 	<ul style="list-style-type: none"> • Surveys • interviews • Desk review 	<ul style="list-style-type: none"> • Correspondence of the project activities to the needs of the beneficiaries • Extent of clarity of the intervention logic to the beneficiaries • Responses from the beneficiaries indicating their desire to choose UNCTAD over other Peer Review mechanisms
	<i>Effectiveness</i>			
3	To what extent does the project contribute to the objective of strengthened capacity of national authorities to effectively enforce competition law?	<ul style="list-style-type: none"> • Survey of Competition agencies, KII (in 6 case study countries), survey of experts • project documents • 3rd party reports 	<ul style="list-style-type: none"> • Surveys • interviews • Desk review 	<ul style="list-style-type: none"> • The proportion of the recommendations adopted or in the process • Responses of the beneficiaries regarding changes in practices and procedures
4	To what extent are project stakeholders satisfied with the quality of the outputs? Have the countries used the reports/outputs produced? How?	<ul style="list-style-type: none"> • Survey of Competition agencies, KII (in 6 case study countries) • project documents • 3rd party reports 	<ul style="list-style-type: none"> • Surveys • interviews • Desk review 	<ul style="list-style-type: none"> • Extent of satisfaction as reported by the beneficiaries • Responses of the beneficiaries regarding the use of the Peer Review report
5	Have there been any unintended (positive or negative) outcomes of the project? What were the main factors influencing the outcomes of the projects?	<ul style="list-style-type: none"> • Survey of Competition agencies, KII (in 6 case study countries) 	<ul style="list-style-type: none"> • Surveys • interviews • Desk review 	<ul style="list-style-type: none"> • Indication of unintended outcomes and the nature of these • Responses regarding external

	Evaluation Criteria and Questions	sources of information	methods of data collection	Examples of indicators
		<ul style="list-style-type: none"> • project documents • 3rd party reports 		factors influencing project outcomes.
	Efficiency			
6	Were the activities carried out within the foreseen timeframe? If not, what led to the delays?	<ul style="list-style-type: none"> • Survey of Competition agencies, KII (in 6 case study countries) • project documents • 3rd party reports 	<ul style="list-style-type: none"> • Surveys • interviews, • Desk review 	<ul style="list-style-type: none"> • Extent of delays compared to the original plans • Extent of delays caused by internal factors • Responses regarding external factors influencing project delays.
7	Have project management and implementation modalities been adequate?	<ul style="list-style-type: none"> • Survey of Competition agencies, KII (in 6 case study countries), survey of experts • project documents • 3rd party reports 	<ul style="list-style-type: none"> • Surveys • interviews, • Desk review 	<ul style="list-style-type: none"> • Proportion of the respondents among the beneficiaries who think that the intervention modalities and modes are adequate, i.e. reflect the needs
	Sustainability			
8	Have the project activities been designed and implemented in such a way to ensure maximum sustainability of their impact, for instance, whether beneficiary country stakeholders and development partners were actively involved in the initiation, design and implementation of the project;	<ul style="list-style-type: none"> • Survey of Competition agencies, KII (in 6 case study countries) • project documents • 3rd party reports 	<ul style="list-style-type: none"> • Surveys • interviews, • Desk review 	<ul style="list-style-type: none"> • Extent of involvement of the beneficiaries in ALL the stages of the project design and implementation • Concrete steps taken by the national partners to implement recommendations
9	To what extent do the national counterparts assume ownership of the Peer Review process and report and have the capacities and willingness to continue the necessary follow-up actions?	<ul style="list-style-type: none"> • Survey of Competition agencies, KII (in 6 case study countries) survey of experts • project documents • 3rd party reports 	<ul style="list-style-type: none"> • Surveys • interviews, • Desk review 	<ul style="list-style-type: none"> • Concrete steps taken by the national partners to implement follow up actions • Extent of funding available (national and IFIs) for follow up actions

5. FINDINGS

5.1. Relevance

5.1.1. Relevance of the UNCTAD Peer Review process

Competition policy features in the development strategies of all the countries covered by the Peer Review processes, e.g.

- Zambia (Fifth National Development Plan 2006 – 2010)
- Tanzania (National Strategy for Growth and Reduction of Poverty II)
- Zimbabwe (National Trade Policy (2012-2016), etc.

Featuring declaratively in the national development plans/Poverty Reduction Strategy Papers (PRSPs) and documents alike is not a robust indication of the genuine commitment of a given Government to promoting protection of economic competition. A track record of successful enforcement would be a better indicator of commitment, and here of course not all the countries will score high (see Section 5.2.1)²⁸. For some of the countries, there is strong evidence that competition policy was genuinely high on the economic policy/reform agenda at the time when UNCTAD committed to conduct the Peer Review process. This is certainly the case for such countries as Serbia and Ukraine, where the improvement of the competition policy and climate was and is part of the EU accession agenda. At the same time it is not obvious that the relevance of the Peer Review processes should be judged based on the type of criteria described above, since:

- the voluntary nature of the Peer Review process is the best indicator of the relevance of the Peer Review process, and
- for a number of countries covered in this evaluation, one of the reasons for requesting the Peer Review was exactly to enable them to advocate their own governments better.

Most of the competition agencies covered in this evaluation suffers from severe financial concerns. Several experts interviewed for this evaluation were of the opinion that the Peer Review process should be initiated only for the countries which commit to increased funding for these agencies, arguing that such commitment is an indication of the relevance of the Peer Review process in the countries concerned. The financial constraints are however objective realities in these countries and many of these governments are highly indebted and cash strapped. Therefore such a requirement would be too strong as a criterion for judging about the relevance of the project. Moreover, most of the experts converged on the opinion that the Peer Review reports *per se* should not be made contingent on the commitment of increased funding by the national governments, nor even be linked to the strong commitments to the reforms in the field of competition by the governments (as opposed to the follow up assistance, which, they think should be linked, see Section 5.1.2).

Based on the responses from the competition agencies surveyed, many approached UNCTAD at a point when they felt that their agencies have reached a certain degree of maturity and they wanted an independent and objective assessment of where do they stand and how to make a qualitatively different and significant improvement in their work.

For a number of agencies, such a review was planned either by their own work plans or by the Government plans, and UNCTAD reviews were a means to address the need.

Several of the experts interviewed were of the view that ideally the Peer Review process of competition law and policy should be an integral part of other ongoing economic reform programs, often supported by such agencies as the IMF/WB, EU and alike, to have that additional leverage that will make the implementation of the recommendations more likely. A good example of this is the EU-ITC-UNCTAD funded “Trade and Private Sector Development” project in Zimbabwe. This is a project with much wider scope and includes activities in the area of protection of economic competition. EU agreed to include these activities, proposed by UNCTAD (related to the implementation of the Peer Review recommendations) in the project document. UNCTAD is the implementing agency for this part of the project with ITC funding (with 2 year duration).

The voluntary nature of the Peer Review process, which is the guarantee for the relevance of these reviews, would make the strict or even just wider application of this criteria difficult however; also, as some of the other experts thought, the Peer Review process might and should, *inter alia*, help in elevating the appreciation of the need for reforms. Both groups agreed however that more analysis should go into assessing where the countries stand in terms of sectoral reforms, being supported by other international partners and more synergies need to be sought. For this, they thought that UNCTAD project team should make better links with other projects of UNCTAD (e.g. COMPAL, of the same competition policy unit), utilizing the expertise and networks available locally.

The vast majority of the respondents from the surveyed competition authorities were aware of other Peer Reviews (e.g. conducted by such agencies as OECD), but thought that UNCTAD Peer Review process:

- is clearly more targeted to developing countries;
- is of a more practical nature resulting in clear roadmaps; and
- is more suited for them since they have long standing prior relationship with UNCTAD, often going back to the very first days of the agencies.

UNCTAD Peer Review process is clearly in line with the objectives of the Development Account, which is a capacity development programme of the United Nations Secretariat aiming at achieving development impact through building the socio-economic capacity of developing countries through collaboration at the national, sub-regional, regional and inter-regional levels. The Development Account provides a mechanism for promoting the exchange and transfer of skills, knowledge and good practices among target countries within and between different geographic regions, and through the cooperation with a wide range of partners in the broader development assistance community. It provides a bridge between in-country capacity development actors, on the one hand, and United Nations Secretariat entities, on the other. The entities offer distinctive skills and competencies in a broad range of economic and social issues that are often only marginally dealt with by other development partners at country level. For the target countries, the Development Account provides a vehicle to tap into the normative and analytical expertise of the United Nations Secretariat and receive on-going policy support in the economic and social area, particularly in areas where such expertise does not reside in the capacities of the United Nations country teams².

² <http://www.un.org/esa/devaccount/about/index.html>

5.1.2. Relevance of the design

The Peer Review process for a given country involves the following activities:

- Producing a Peer Review report for each beneficiary country;
- Organization of a Peer Review round table discussions at the sessions of the Intergovernmental Group of Experts (IGE) on Competition;
- National seminars to disseminate the results and recommendations of the Peer Review;
- Awareness and capacity-building workshops; and
- Study tours.

For some countries the assistance has covered only Peer Review reports. There does not seem to have been however any other reason for this differentiated approach other than the availability of funding.

The respondents from the competition agencies appreciated that they were part of the design of the follow up activities, where the latter had taken place. In terms of the relative value they attach to the different components of the Peer Review process, they were divided:

- for some, the Peer Review reports *per se* were the most important part of the Peer Review process, with a few respondents thinking that their development should entail a longer period of time in the countries;
- some noted that the follow up technical assistance is more important and the Peer Review processes should have more resources allocated to training and technical assistance;
- other respondents thought that the process of developing the Peer Review reports itself was the most valuable part for them, as it gave them the opportunity to stand back and have a fresh look at their agency, its challenges and achievements, separately and in comparison to their peers; and
- 3 of the respondents from the competition authorities mentioned that the dissemination part was most useful, as it provided the various stakeholders involved with the project an opportunity to share insights of inner workings of competition and how it relates to their area of work. Several experts interviewed for this evaluation thought that more needs to be done in ensuring that the final country reports are presented even more widely in the countries, to a wide range of audiences, including Civil Society Organizations (CSOs), journalists writing on economic matters, academia, etc.

The experts interviewed for this evaluation were unanimous in their appreciation of the need for the Peer Review reports *per se* for all the countries that request it. They were similarly unanimous that the Peer Review process for each country should include a stage in 2 – 3 years' time whereby a short review takes place, which will look into the extent to which the recommendations were implemented. They thought that this should not be a self-report, but should however include a “reporting back” stage to the IGE. As for the technical assistance part, the opinions of the interviewed experts divided.

- some thought that all the Peer Review processes should include a component on technical assistance to support implementation of the recommendations from the Peer Reviews; and

- the other part thought that the technical assistance should accompany the Peer Review reports only if there is an evidence of a strong commitment by the respective governments and respective constituents: as mentioned earlier, they thought that UNCTAD networks in the countries could serve as the verification mechanism for genuine nature for the request for technical assistance. Overall a good level of commitment was present in all the countries. But it does not apply to all the activities in all the countries. For example, anecdotal evidence from one country indicates that a training event targeting judges did not generate much interest from them. Such examples are very few and far between, but the experts thought that more rigor and detail needs to be going into the analysis of the commitment and interest prior to committing to certain activities

Several experts thought that UNCTAD should take a longer term view and approach towards each country, as reforms in the competition field take time to materialize and this has to be acknowledged.

Yet another comment made by a few experts was that ideally the competition authorities should commit in advance not to introduce significant changes in the Peer Review reports during the stage of their own review, something that has happened on occasion, when the drafts of these reports reflected negatively on the work of the competition authorities.

Thus the intervention logic of the project is coherent, but perhaps some adjustments need to be made in the weight attached to the follow up assistance in the overall package of the Peer Review process, and to the conditions based on which it is provided.

5.1.3. Case study countries

Tripartite review

The opinions of the experts about the relevance of the tripartite nature of the review for Tanzania, Zimbabwe and Zambia split, as the competition agencies and regimes in these countries seem to be in different leagues, with Zambia and Tanzania more advanced, as well as because of the fact that they belong to different trading blocs with their own competition oversight bodies. There were others however who thought that the above factors should not be deterrents in conducting regional reviews, since these neighboring countries need to cooperate on terms of competition policy anyway, and also because all these countries are members of South African Development Community (SADC), the members of which had signed a “Memorandum on Regional Cooperation in Competition and Consumer Policies”; recent developments within SADC indicate that the approach was valid (*see Section 5.2 on Effectiveness*)

- *Tanzania*

The Fair Competition Commission (FCC) approached UNCTAD for Peer Review, which they had identified as a need prior to that but did not have the financial means to carry it out. FCC saw the need to learn more about the legal, administrative and other potential shortfalls that it faces in implementing its activities in order to identify the areas for future improvement. As mentioned earlier, competition protection issues

feature high on National Strategy for Growth and Reduction of Poverty II of Tanzania and the country enjoys a reputation of having a genuine commitment to it overall.³

- *Zambia*

The competition agency approached UNCTAD because it was concluded by its members that it needed technical assistance in terms of international best practice in the implementation of competition law. At the time, the Competition Law (1994) had just been amended (in August 2010), to include more elaborate provisions on consumer protection. Therefore, receiving technical guidance and learning about the international best practice were thought to be cardinal at the time. In addition, an independent evaluation of the competition regime and its administration was thought to be important in order to appreciate how the agency is faring in relation to others. As mentioned earlier, strengthening institutions and establishing proper regulatory framework to ensure fair competition featured high in the Fifth National Development Plan 2006 – 2010 of Zambia, and the country enjoys a reputation of having a genuine commitment to it overall;⁴

- *Zimbabwe*

The Competition and Tariff Commission (CTC) of Zimbabwe volunteered for the Peer Review in 2011 with the main objective to benefit from UNCTAD's capacity building and technical assistance programme, particularly in the training of staff and members of the Commission, including judges of the Administrative Court and the High Court who hear appeals against the decisions of the Commission, on various aspects of competition policy and law. Also, the implementation of Zimbabwe's competition and trade tariffs policies under one agency was effected in 2001 with the merger of the former Industry and Trade Competition Commission (ITCC) and Tariff Commission (TC) to form the CTC. There was therefore a need identified to learn from international best practices on the effective joint implementation of the two sets of policies, which can be both contradictory and complementary. In the enforcement of the country's competition law, the Commission had identified a number of areas in the legislation that needed amending for effective enforcement. Technical assistance related to amending of the legislation (the Competition Act [Chapter 14:28]) was therefore thought to be required. As mentioned earlier, competition protection features prominently in the National Trade Policy (2012-2016) of Zimbabwe, and the country certainly makes important strides. At the same time, indications from third party reports point to a different direction, with protection for State Owned Enterprises (SOEs), certain sectors of the economy being reserved for local businesses only, etc.

Serbia

Competition protection in Serbia was regulated by the Law from 2005, until it was amended by the new Law in 2009, which introduced new institutes of competition in Serbia such as: fines, leniency, and dawn raids. Since the competition authority did not have experience in implementation of those instruments, it decided to apply for the Peer Review. Improving competition climate in the country is one of the key conditions on the country's accession path to the EU.

³ see for example, US State Department Assessment of the Investment Climate for Tanzania 2013

⁴ *ibid*

Indonesia

Peer Review process of the Indonesian competition law and policy was conducted in 2008-2009. This review was the first of its kind for the competition authority, the KPPU, and was conducted when KPPU was 8 years old, an age when the agency felt that it has started growing its capability in most of the areas, and that the Government of Indonesia was starting to acknowledge the existence of her competition law. So, the review was seen as very timely by KPPU, to help it gain the policy makers' acknowledgement and support.

Nicaragua

UNCTAD has a long history of providing cooperation in the field of competition in Nicaragua, going back to 2002, with the development of legislation, previous studies and drafting manuals, therefore it was thought to be by far the best placed international organization qualified to conduct the review, after the competition authority accumulated its first experiences in the application of the provision of the legislation.

5.2. Effectiveness

5.2.1. Overview

Capacity building

All but two respondents from the surveyed competition authorities agreed that the Peer Review processes *per se* had contributed and continue to contribute to building of the capacity of the agencies in implementing their mandates enforcing the understanding of the strengths and weaknesses of the country's competition policy and law and their enforcement. For some, the capacity building was more directly linked to the implementation of recommendations from the Peer Reviews and the de-facto, improvement in the legal framework of competition policy. For a few respondents (e.g. Nicaragua) showing the Government the benefits of a competition policy and demonstrating that competition can be used as an engine of development and poverty reduction was also equally important, and they saw that Peer Review process in its entirety as an important step in capacity building. For others (e.g. Armenia) leveraging the follow up assistance from other engaged international agencies was perhaps the most important aspect. For this group the capacity building was not necessarily related to the follow up technical assistance. For the remaining two agencies however, capacity building was clearly more linked to the technical assistance (TA), and since some of the respondents had not received the technical assistance (TA) package at the time of writing this report, they thought that the capacity building was not completed in the way they would have expected it to.

Quality of the assistance

The responses from all the competition authorities indicate that one of the main reasons of approaching UNCTAD to request a Peer Review of their competition law and policy is the high level of appreciation of the rigor and quality of the review overall, which they cite as very important for them. 7 respondents were very satisfied with the quality of the outputs of the project: for them the review provided them with an instrument to advocate relevant parties (especially parliaments and ministries) on the need to strengthen the implementation of national competition policy and law. The other 5 remaining respondents were *mostly or somewhat* satisfied: the countries of this group are the ones for which the technical assistance part had not as yet (by the time of writing this report) materialized and clearly the responses reflect this fact.

The Peer Review reports were used in amending legislation (all countries, but mostly as new drafts for now), advocacy (e.g. in Indonesia and Nicaragua), and establishing new training agenda for the staff (Zimbabwe), etc. In Ukraine, the conclusions and recommendations related to competition law and policy obtained as a result of the Peer Review were used during development of the National Program of Competition for the years 2014-2024.

Adoption of the recommendations

The proportion of the recommendations already adopted ranges from 10% (Ukraine, *NB*: the Peer Review session was held in July 2013) to 85% in the case of Indonesia (current draft law in the Parliament), with the average of 40-50%, based on the responses to the questionnaire sent out as part of this evaluation. The notion of “*adopted*” is somewhat vague and confusing however, as many respondents further clarified that the draft amendments are yet to be adopted by the legislature. Most of agencies saw it as an important task for them to achieve their final adoption by the legislature and enactment along with more emphasis on advocacy and implementing “advocacy” related recommendations.

More importance attributed to competition policy

There is evidence that in some countries, the Peer Review process has succeeded/contributed to elevating the importance of competition policy in the reform agendas of the respective governments. For example

- In Ukraine, the task of developing the National Program of Competition for 2014-2024 is determined in the National Action Plan from 2013 concerning the implementation of the Program of economic reforms; and
- in Namibia the development of a competition policy is prioritized for 2014.

Unintended consequences

There were a number of positive unintended consequences, e.g.:

- In *Zimbabwe* the Peer Review process greatly increased the Commission’s visibility to its stakeholders, both in the private and public sectors of the economy;
- In *Nicaragua* several universities have opened courses on competition law; and
- in Armenia, the meetings and discussion had a significant impact on the consensus – building with regulators (e.g. Public Service Regulatory Commission of Armenia).

Spillover effects

There are a number of examples illustrating the spillover and catalytic impact of the Peer Reviews. In some cases, like in the case of the Tripartite review this envisioned in the design; in some other cases the developments were not predicted or designed by the project. The examples below show the cross fertilization between Peer Review work products amongst countries in different regions and spillover effects among the improvements in the work of the competition agencies within regions.

- **Tripartite Peer Review of Tanzania, Zambia and Zimbabwe**

There are already good indications that the tripartite approach to Peer Reviews in these three countries is contributing to strengthening of regional under the framework of SADC. All three countries are members and SADC has a regional cooperation framework on competition and consumer policies. For example, prior to the dissemination events, the three competition agencies presented the findings of the

Tripartite Peer Review at the 5th Regional Workshop on Competition and Consumer Law and Policy for SADC Member States (11/2012). The Tripartite Peer Review is expected to have further effects on the advance of the regional competition framework and regional cooperation. As an example, Seychelles and Namibia applied to UNCTAD for a Peer Review in 2012 and 2013 respectively. On its part, the SADC Secretariat requested UNCTAD to organize training for judges and commissioners from SADC countries, which took place in September 2013 in Botswana in cooperation with SADC, Botswana Competition Authority and GIZ. Furthermore, the dissemination workshops aroused considerable interest among development partners, such as the EU, DFID and GIZ, which participated in the workshops and with whom UNCTAD is cooperating on the implementation of some of the recommendations.⁵ In 2011 an inaugural meeting of the African Competition Forum was formed and the countries of the Tripartite review are active participants (Zambia and Tanzania in particular), so it could be expected that their cooperation in the field of protection of economic competition will continue also under the umbrella of this new Forum.

- **Sharing of tools, guides and best practice**

The hypothetical case examples from the Cartel Detection Manual produced for Indonesia were used in other training workshops held after dissemination events in the Tripartite Peer Review countries, that is Tanzania, Zambia and Zimbabwe; and the staff benefited from this work; and

- **Regional spillovers**

As a follow-up to the Peer Review of Serbia, a workshop to disseminate the findings and recommendations of the Peer Review was held in October 2012 in Belgrade with the participation of not only of the representatives of Serbia's public and private sector, but also competition officials from wider Southeast Europe region. The dissemination event provided a useful platform to share experiences among young competition agencies in the Balkan region as well as to raise awareness of all stakeholders on cartels and other anti-competitive practices. The lessons learnt from the Serbian Peer Review were also shared during the competition forum launched in cooperation with the Competition Commission of Bulgaria and the Ministry of Foreign Affairs of Bulgaria, which was attended by 12 representatives from other competition agencies in the Balkan region. Partly as a result of these developments, Albania applied to UNCTAD for a Peer Review in 2015.⁶ Also, Serbia's volunteering for the Peer Review process encouraged Ukraine to come forward and request a Peer Review for the year 2013.

⁵ Link to the Tripartite Peer Review Report:

http://unctad.org/en/PublicationsLibrary/ditcclp2012d1_Comparative_Report_en.pdf

Link to the dissemination events in Harare, Lusaka and Dar es Salaam:

<http://unctad.org/en/pages/MeetingDetails.aspx?meetingid=196>

⁶ Link to the Serbia Peer Review Report (also available in Serbian):

<http://unctad.org/en/pages/PublicationArchive.aspx?publicationid=934>

Link to the dissemination event in Belgrade:

<http://unctad.org/en/pages/MeetingDetails.aspx?meetingid=161>

Link to the Sofia Competition Forum:

<http://unctad.org/en/pages/MeetingDetails.aspx?meetingid=188>

Contribution to the improvements of the competition protection climate

Analysis of the composite Competition Indices (CI) which are part of the Global Competitiveness assessments, carried out by the World Economic Forum (WEF) annually⁷, for the countries covered under this evaluation lends some interesting observations. The scores improved for 10 countries, with the exceptions being Namibia and Zimbabwe. It could potentially be claimed that UNCTAD Peer Reviews has contributed to this result, as the efforts aimed at improving the legal frameworks are part of the calculation of these indices (see Figure 4). The rank however declined for Armenia, Mongolia, Tanzania and Zambia (see

Figure 5), which points to other factors playing an important role and other countries improving their competition score more drastically. Armenia, Mongolia and Pakistan could serve as examples to explain the phenomenon:

- **Armenia:** Indicators for Armenia of the intensity of local market competition, the extent of market dominance, and the effectiveness of competition policy lag behind other countries in the region, as is claimed by a recent WB publication.⁸ WB (2013, Armenia) concludes that part of the problem lies in the legal framework, as some of its aspects limit the effectiveness of its implementation, particularly concerning the assessment of market dominance, the structure of fines, mergers and concentrations. The State Commission on Protection of Economic Competition (SCPEC) also has an undue focus on price levels rather than anticompetitive conduct, and lacks investigative powers. The 2010 Competition Law introduced important provisions for dealing with economic groups, but certain key areas still require clarification;⁹
- **Mongolia:** According to the USAID experts, the Law on Competition would be more suitable to the legal environment for business if it was based on a civil administrative law, as doing so would create regulations that would allow for market participation. The most common problems in business, according to them, are administrative issues allowing cartels to continue operating unchecked;¹⁰
- **Pakistan:** According to the Sustainable Development Policy Institute (2011) the Competition Commission of Pakistan does aim to provide a legal framework for the

⁷ <http://www.weforum.org/issues/global-competitiveness>

⁸ World Bank (2013): "Republic of Armenia Accumulation, Competition, and Connectivity April 2013", p.xix.

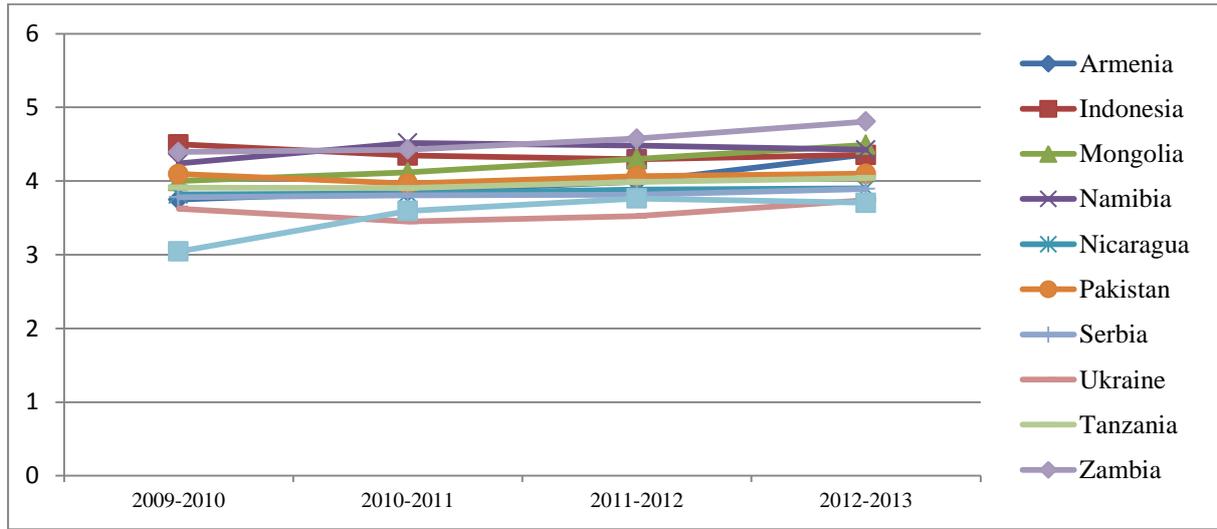
⁹ According to WB (2013, Armenia secondary legislation will need to introduce a number of additional details, including: (a) the treatment of economic groups, the assessment of direct and indirect control of firms with ownership links, and a definition of an economic entity; (b) a definition of independence, including that the economic entity is entitled and has powers to define its competitive strategy without interference or influence from another economic entity; (c) the concept of control. The concept of a group of persons in the Competition Law does not explicitly contemplate the notion of control as the basis for the existence of the group; (d) in order to be able to define economic entities for the implementation of the Competition Law, the SCPEC needs to have access to ownership information for the companies under investigation. This will require maintaining information channels with the State Registry, Credit Registry, and Central Depository. Memoranda of understanding that define protocols for gaining and granting access to information managed by other entities could be a useful tool in this regard. To improve merger control policy, merger notification procedures should be simplified and current thresholds for merger notification should be revised; (e) the current structure of fines and sanctions and SCPEC's investigative powers are too limited to deter anticompetitive conduct; efforts are underway to define fine calculation methods in the secondary legislation; (f) the SCPEC's implementation of competition policy should refocus on market contestability rather than on price monitoring; and (g) the SCPEC does not have the necessary instruments to pursue advocacy vis-à-vis sector regulators and other government bodies .

¹⁰ <http://mongolianeconomy.mn/en/p/2395>

business environment based on healthy competition, but it fails to do so efficiently due to the government's industrial licensing and financial sector policies which lead to the prevalence of monopolistic market structures.¹¹

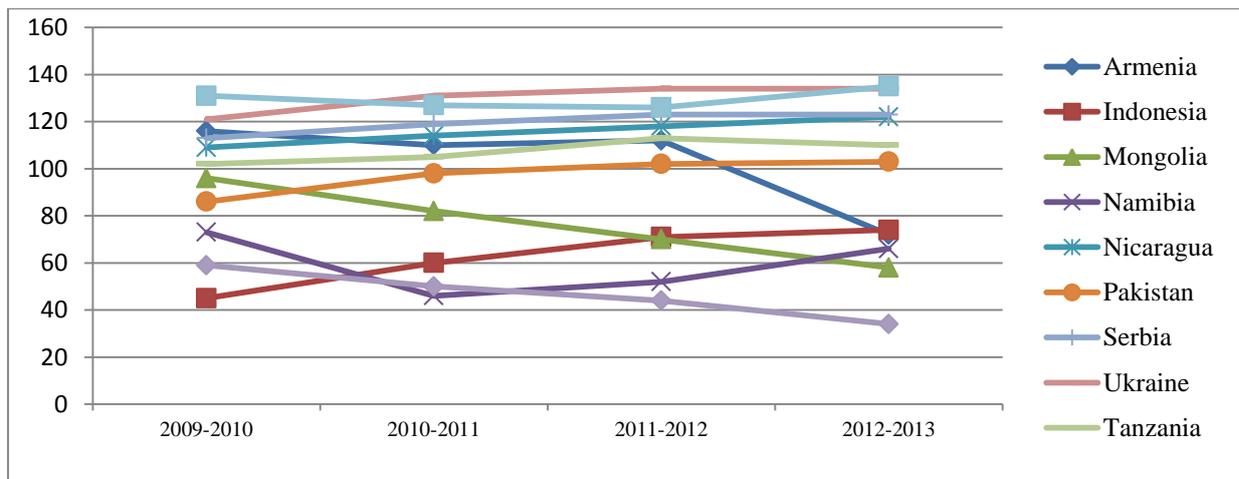
The examples above indicate that the Peer Review reports are only part of the legal challenges of a larger scale and should be seen as a start only, requiring further assistance with secondary legislation and revisions of the related laws: failure to do so renders the legal advances in the competition field *per se* less effective, especially in the countries with overall weak legal systems regulating business climate.

Figure 4: Competition Score (7= best)



Source: Based on data from GCI, <http://www.weforum.org/issues/global-competitiveness>

Figure 5: Competition Rank



Source: Based on data from GCI, <http://www.weforum.org/issues/global-competitiveness>

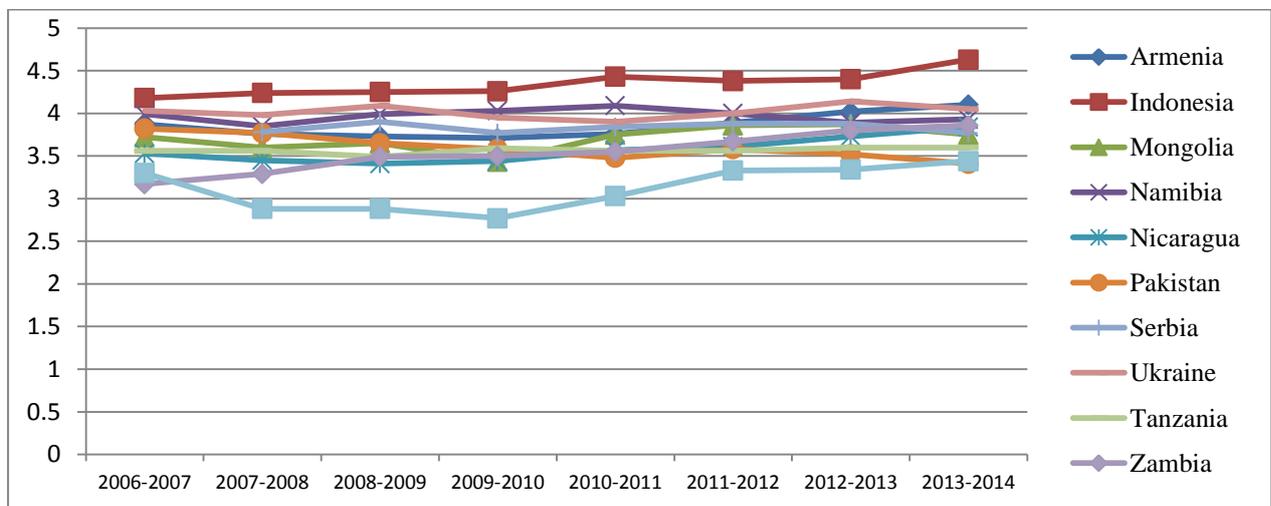
¹¹ Sustainable Development Policy Institute (2011):” Experiments with Industrial Policy: the case of Pakistan: by Sahar S. Hussain and Vaqar Ahmed, Working Paper No: 124

Effectiveness of competition authorities

We also look at the index of ‘Effectiveness of the competition protection agency’, one of the parts of the composite Competition Index from GCI. Here:

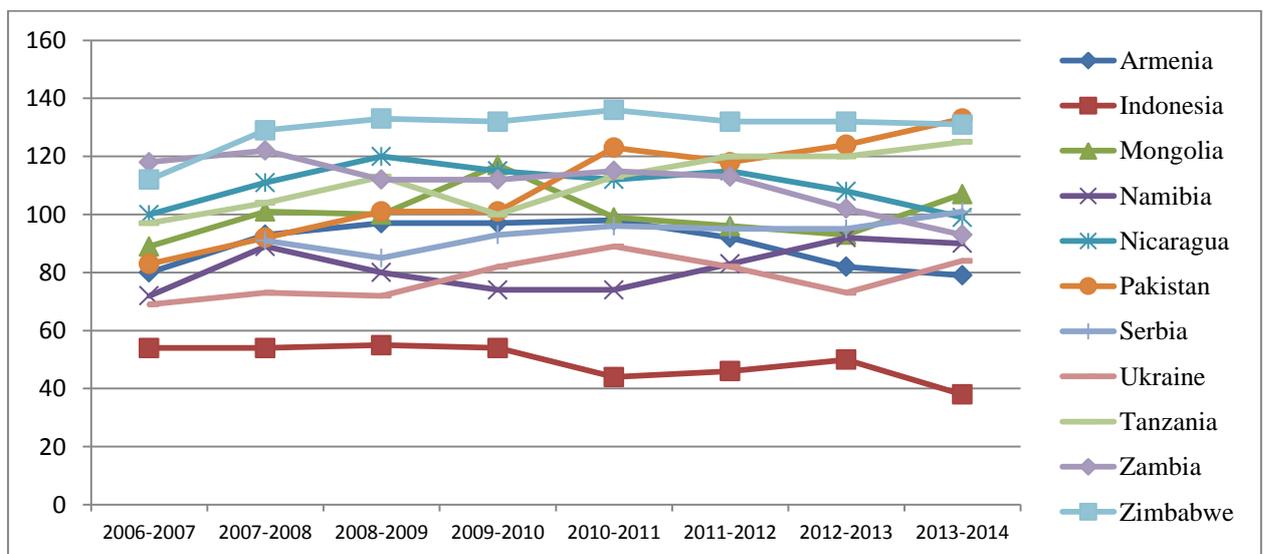
- while the *scores* of Armenia, Indonesia, Namibia, Nicaragua, Zimbabwe increased slightly in the last 4 years, they declined for Serbia, Ukraine, Tanzania, Zambia, Pakistan, and Mongolia, and .
- Mongolia, Pakistan, Serbia, Ukraine and Tanzania improved their ranks, but more countries dropped, namely: Armenia, Indonesia, Namibia, Nicaragua, Zambia and Zimbabwe dropped in the last few years.

Figure 6: Effectiveness of the competition agency, score (7=best)



Source: Based on data from GCI, <http://www.weforum.org/issues/global-competitiveness>

Figure 7: Effectiveness of the competition agency, rank



Source: Based on data from GCI, <http://www.weforum.org/issues/global-competitiveness>

This proves the point made earlier that it takes time and many other factors for the improvements in the overall competition climate, e.g. in the legal framework, for it to translate into better enforcement.

- a. One of the key reasons for the fact that enforcement is lagging behind the legal framework lies in the limited human and financial capacity. For example:
 - **Indonesia:** A recent ADB report states that the human resource should be equipped with capacity building and other benefits sufficient enough to reduce the high turnover in the employment in the KPPU;¹²
 - **Serbia:** A recent report from Serbia highlights that notwithstanding the undeniable progress in the legal regulation of the activities carried out by the Commission, it is still necessary that its institutional and administrative capacity be promoted and its personnel be continuously trained for taking an effective action, and that an emphasis should be put on building the institutional and human capacity of the agency for the purposes of carrying out credible economic analysis, in order to timely detect distortions of competition in the market;¹³ and
 - **Pakistan:** A recent report from Pakistan states that the current workforce at the Competition Commission of Pakistan (CCP) constitutes 40 non-administrative staff which is insufficient for the proper enforcement of the Act, and that due to the shortage of funds the CCP is not able to hire competent professional staff.¹⁴
- b. The other main reason is that the enforcement is challenged by many other complicated net of factors, as described in the case studies below, including corruption in the judicial system, protective policies for domestic companies and SOEs, exemptions of specific sectors from the purview of the competition laws; lack of structural reforms in the economy, inadequacy of some of the secondary legislation, lack of transparency in the Government regulatory system (e.g. procurement), etc.;

Long term outcomes: competition and markets

The literature review shows that competition policy reforms allow markets to work more efficiently for the benefit of consumers and drive sustainable economic growth. Three main insights emerge¹⁵:

- Greater market competition matters for achieving greater innovation, productivity, and economic growth;
- Policies that help open markets and remove anticompetitive regulations can promote competition, resulting in lower prices and better deals for consumers and firms; and.

¹² ADB (2010): "Competition Policy in Indonesia: A Stock Take of Recent Development", by Haryo Aswicahyono and Pratiwi Kartika

¹³ Faculty of Economics, University of Kragujevac (2012): "Institutional Assumptions of competition Policy Efficiency", by Boban Stojanovic, Vladimir Radivojevic and Tanja Stanisic, Economic Horizons, May - August 2012, Volume 14, Number 2, 125 - 135

¹⁴ Sustainable Development Policy Institute (2011): "Experiments with Industrial Policy: the case of Pakistan", by Sahar S. Hussain and Vaqar Ahmed, Working Paper No: 124

¹⁵ WB/IFC (2012): "Viewpoint-public Policy for the Private Sector: Competition Policy", No 331

- Effective enforcement of competition rules across sectors—rather than the pure existence of competition laws—makes a difference in the impact of competition policies.

One of the determinants of this impact includes the finding that competition matters for productivity growth through two key mechanisms:

- it shifts market share toward more efficient producers, and
- it induces firms to become more efficient so as to survive. Kahyarara (2011) has demonstrated it on the example of Tanzania¹⁶ and Shepotylo and Vakhitov (2012) for Ukraine (they show that liberalization of services increased the total factor productivity by 3.6% in Ukraine)¹⁷.

Most importantly, WB/IFC (2012) finds that it is not the existence of competition rules, but their effective enforcement, that matters most for economic performance. In a study of 42 countries Kee and Hoekman (2007) found that in industries where competition rules were actively enforced, enforcement increased the number of domestic firms by 7.2 percent.¹⁸ Hence the importance of the support to the competition agencies in longer term and more effective approaches to ensure that the legislative changes are enacted and enforced.

5.2.2. Case study countries

Tanzania

Some of weaknesses and proposed recommendations addressed by the Peer Review Process were as follows:

- Section 9(4) of Tanzania’s competition law excused perpetrators of cartel conducts if such conducts were deemed to have been made out of intention and negligence. The UNCTAD review proposed that such excuse should be waived from the law such that intention and negligence should not be important to cartel behavior;
- Section 9 of the law enlists cartel arrangements. Under the UNCTAD review it was proposed that such arrangement be extended to conducts such as market allocation, customer allocation and output restriction; and
- Section 6 of the law exonerated state bodies when engaging in trade. Under UNCTAD peer review it was proposed that section 6(1) and 6(4) to be revised so that the application of the law to State bodies does not depend on whether they engage in trade, but whether their acts, arrangement or behavior affect trade.

Over 50% of these recommendations, including those listed above have been taken up for inclusion in the amendment of the law. The process is currently at an advanced stage. In general Tanzania is praised for its genuine strides to improve the competition and business climate in the country, but the Tanzanian judicial system continues to function inefficiently and remains plagued with corruption.¹⁹

¹⁶ 16 Godius Kahyarara: (2011) “Market Competition and Performance of Tanzanian Manufacturing”, Economics Department, University of Dar-es-Salaam, Tanzania

¹⁷ Shepotylo, O., and V. Vakhitov. 2012. “Services Liberalization and Productivity of Manufacturing Firms: Evidence from Ukraine.” Policy Research Working Paper 5944, World Bank, Washington, DC.

¹⁸ Kee, H. L., and B. Hoekman. 2007. “Imports, Entry and Competition Law as Market Disciplines.” *European Economic Review* 51 (4): 831–58.

¹⁹ 2013 State Department (USA) Investment climate Statement, <http://www.state.gov/e/eb/rls/othr/ics/2013>

Zambia

The Peer Review process prompted the Zambian Competition authority to think about developing and adopting an effective leniency programme: this was in the process of being developed at the time of writing this report. The Competition authority was also in the process of implementing changes related to achieving proportionality in terms of punishment for competition law infringements. Zambia was a pioneer in Africa in introducing competition policy and has recently significantly improved its competition framework by repealing the Competition and Fair Trading Act (CAP 417 of 1994) and replacing it with the Competition and Consumer Protection Act (No. 24 of 2010) to enhance enforcement powers and further protect consumer welfare. However, implementation of its competition policy still requires Zambia to confront challenges such as the application of the Act to regulated sectors and financial and human resources constraints.²⁰

Zimbabwe

The recommendations of the Peer Review were in three parts: (i) those specifically addressed to the Commission; (ii) addressing activities at national level; and (iii) addressing activities at regional level. With regards the recommendations addressed to the Commission, about 50% have been implemented, according to the Competition Commission. The Commission has established an Inter-Organizational Committee on Competition Peer Review Recommendations, which it chairs, Peer Review with the aim of ensuring the smooth and effective implementation of the recommendations. The Committee is comprised of Government Ministries and Departments, and other relevant organizations, chaired by the Competition and Tariff Commission (CTC). The aim is to ensure ownership by all stakeholders as well as policy coherence. Only 10% of the activities at national level have been undertaken however because, according to the competition authority, the necessary donor funding has still not been released: the latter has affected the drafting of the comprehensive competition policy for Zimbabwe, and the drafting of the new competition law for country.

Third party reports note that while the government's officially stated policy is to encourage competition within the private sector the bureaucracy within regulatory agencies lacks transparency. Some of the other specific concerns include: regulations to implement the Indigenization Act (03/2010), creating new uncertainty and further harming the investment climate; the Government reserving several sectors for local investors; and the protection regime for the 76 State-Owned Enterprises (SOEs), many of which support vital infrastructure (competition within the sectors where SOEs operate tends to be limited).²¹

Recently EU has approved a project for Zimbabwe, within which ITC is funding a 2 year long assistance package to improve the regulatory framework for economic competition (funded by ITC and to be implemented by UNCTAD) will now allow addressing these challenges.

Serbia

One of the Recommendations of the Peer Review process was to amend the relevant Article of the Law on protection of competition in a way that the Competition Protection Commission (CPC) does not bear the financial risk in case the fines are decreased or revoked by the Administrative Court. The Law was amended in that manner at the end of 2013. The recommendation regarding a campaign against bid-rigging was implemented in cooperation

²⁰ OECD (2011): "OECD Investment Policy Review of Zambia: Advancing investment policy reform"

²¹ <http://www.state.gov/e/eb/rls/othr/ics/2013/204764.htm>

with the public procurement authority during 2012. CPC reinforced its relationship with the Public Procurement Authority and has been working closely with it on the adoption of a national strategy to fight against corruption in public procurement. They have organized many seminars and meetings together in the last six months. The memorandum of cooperation between these two institutions will be signed soon. The new Law on public procurement was adopted in 2012 and the Commission was then in a position to provide its comments on the draft Law, subsequently accepted. For example the new Law provides for the Commission's engagement in every suspicious bid rigging case. The introduction of this new Article of the Law on public procurement resulted in the initiation of the first bid rigging case before the Commission. In 2012 and 2013 the staff of CPC participated in the workshops on conducting down-raids, acquiring forensic skills and econometrics knowledge, in line with all the recommendations of the Peer Review report. According to CPC, the Peer Review provided an opportunity for Serbia to demonstrate its willingness to carry out the reforms required to join the European Union and the WTO. The EU, which took part in the Serbia Peer Review, is funding the "Project for Strengthening the institutional capacity of the Commission for Protection of Competition (CPC) in the Republic of Serbia". The Project included some of the UNCTAD Peer Review recommendations on competition policy in its programme. The 30-months Project is implemented by a consortium led by Deutsche GIZ. It started in September 2012 and will be completed in March 2015. The project aims to enhance the CPC's enforcement capacities, improve capacities of sector regulators in protecting competition and to promote competition culture in Serbia.

Around 50% of the recommendations from the Peer Review report have either been or are being implemented.²² Some recommendations were not addressed to the Commission *per se*, as the responses from the CPC to the survey indicate. For example, the Peer Review Report suggested establishing a High-level Unit for competition policy within the Government structure: this is perceived to be out of Commission's jurisdiction, except that CPC can advocate for this. At the same time, as noted in a recent report on competition policy in Serbia, in the absence of a comprehensive and coherent, harmonized and long-term strategy of institutional reforms, pursuing competition policy reforms is bound to be not too effective and may even protect the monopolies.²³

Indonesia

As a follow-up to the implementation of the recommendations of the Peer Review of Indonesia, a Cartel Detection Manual, which includes guidelines on cartel enforcement, was published to guide the staff of the Indonesian Competition Authority (KPPU) in competition law enforcement against cartels, coupled with a training workshop (09.2012) organized by UNCTAD to disseminate the Cartel Detection Manual and to elaborate on its application of the detection and investigative techniques and tools described in the Manual by KPPU case handlers in real cases. A tool kit is under preparation by KPPU, UNCTAD and the OECD pertaining to the application of the competition law to SOEs.²⁴ According to the KPPU the Peer Review provided them with additional insights into such issues as conflicting articles of the law and challenges with the appeal process. KPPU also obtained a different perspective in measuring the effectiveness of a competition agency, and managing consumer protection

²² based on the response to the questionnaire sent out as part of this evaluation

²³ Faculty of Economics, University of Kragujevac (2012): "Institutional Assumptions of competition Policy Efficiency", by Boban Stojanovic, Vladimir Radivojevic and Tanja Stanisic, Economic Horizons, May - August 2012, Volume 14, Number 2, 125 - 135

²⁴ Link to Indonesia Peer Review Report: http://unctad.org/en/Docs/ditceclp20091_en.pdf

issues from competition perspective. KPPU particularly valued obtaining a clearer view of the value that the stakeholders attach to the existence of national competition policy and law.

According to KPPU, around 85% of the recommendations of the Peer Review either have or are being implemented. Some other recommendations have been implemented even *during* the Peer Review process. At the time of writing this report, the proposal for amendments to the competition law had entered the parliamentary session and was expected to be adopted before the national elections in 2014. Non-procedural recommendations were mostly implemented. For KPPU, the next step in their strategy is to develop an advocacy program. A few of the recommendations were thought to be too complex for the implementation. For example, the recommendation to move towards developing and enforcing consumer protection policy is seen as related to the amendments of several laws and regulations, including consumer protection law, trade law, etc.

Despite this notable progress ADB (2010) identifies several problems with regards to competition law and its enforcement in Indonesia, including: (a) clarification of the mandate (focus and scope of work) of the KPPU, arguing that the focus should be on the business conduct instead of market structure; (b) the treatment of vertical integration *per se* as illegal case and its exception to small enterprises and cooperatives in need to be revised; and (c) the need in the elevation of the institutional status of KPPU.²⁵

Nicaragua

Nicaragua volunteered for the UNCTAD Peer Review in 2012, with the Peer Review Report launched at the 13th session of the IGE in July 2013. A country dissemination workshop for recommendations from the Peer Review was held during October 2013.²⁶ According to the competition authority, the Peer Review enabled it to hold discussions with the members of the Parliament regarding the options of reforming the Law 601 and with Judges of the Supreme Court about the jurisprudence in competition field. At the time of writing this report, both processes were underway. According to the Nicaraguan competition authority one of the main benefits of the Peer Review process was the fact that it contributes to demonstrating to the Nicaragua's Government the benefits of competition policy serving as an engine of development and poverty reduction provided that the competition authority (Procompetencia) is supported in promoting the legal reforms and seeking a larger budget for its operations than what it is being allocated coupled with technical assistance for the training of the staff. According to Procompetencia, all of the above constitutes a complex process and the implementation of the recommendations could realistically be expected in the medium term and not immediately. What is important however is that the essential discussions on such aspects as law reforms have started and the discussion with Judges about jurisprudence, the increase of budget for the institution and technical assistance for the staff have been launched.

Interestingly Nicaragua is the only country in the region where the competition law recognizes the strong barriers faced by SMEs as producers of goods or services to enter the market.

²⁵ ADB (2010): "Competition Policy in Indonesia: A Stock Take of Recent Development", by Haryo Aswicahyono and Pratiwi Kartika

²⁶ Link to Nicaragua's Peer Review request:

[http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=221&Sitemap_x0020_Taxonomy=Competition Law and Policy;#1714;#COMPAL Programme;#20;#UNCTAD Home](http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=221&Sitemap_x0020_Taxonomy=Competition%20Law%20and%20Policy;#1714;#COMPAL%20Programme;#20;#UNCTAD%20Home)

Not much can be said about the application of the law, since the agency had very little time to work by the time of writing this report: it starting operating by mid-2011 only. It certainly faces significant challenges ahead, which include not only its financial status, but also challenges in related laws and Government operating systems: for example, the lack of transparency in the Government regulatory system (e.g. procurement) poses significant challenges.²⁷

Ukraine

The competition policies in Ukraine have been developing fast in the last several years. The competition authority, the Antimonopoly Commission of Ukraine (AMCU) has been hailed recently by the leading experts in competition for its bold moves. The prospective Association Agreement with the EU was certainly one of the main driving forces behind this. The approximation of the legislation in the field of competition to that of the EU at AMCU and bold steps in their enforcement resulted in some tangible results: in 2012, 3.1 billion UAH (double the value of previous years) was collected as fines and compensation, and 7,700 violations of the Law on Protection of Economic Competition were detected and prevented; 42% of detected cases include 3,200 cases of abusing the dominant position, and 25% (1,900) relate to the anticompetitive acts of executive bodies, local government, administrative management, and control bodies.²⁸

In 2012 the government adopted and submitted for the parliamentary review 2 important bills: (a) "On State Aid to Business Entities" and (b) the "National Program on the Development of Competition in Ukraine for 2014-2024". The latter was drafted pursuant to National Action Plan from 2013 in realization of the Program of Economic Reforms for 2010-2014. The Program stipulates the mechanisms for coordination of industrial, agricultural, investment, foreign trade, and price policies, as well as the policies of protection of consumer rights and competition. . It includes key provisions for achievement of specific goals.²⁹

5.2.3. Conclusion: Attainment of the Expected Achievements (EAs)

Thus regarding the Expected Achievements (EA), the evidence collected in this evaluation points to the following:

- Policy makers were enabled to address the weaknesses in the sphere of the protection of economic competition and promote best standards equipped with better information base thanks to the improvements in the legal environment (EA2); and
- Judged by the feedback collected in this evaluation, policy makers were enabled to better understand the strengths and weaknesses of the competition policy and legislation regimes and the recommendations for their improvement as a result of the technical assistance they received (training and seminars) in those countries where the technical assistance was delivered (EA1): this is based on self-reports however and it is not feasible to independently verify these claims under the current evaluation.

The project has made a notable progress towards its overall objective (medium term outcome) in terms of strengthening the capacity of national authorities to effectively enforce competition law. The translation of the increased capacity to effectively enforce competition

²⁷ <http://www.state.gov/e/eb/rls/othr/ics/2013/204705.htm>

²⁸ <http://en.info-kmu.com.ua/2014-01-31-000000pm/article/5830637.html>

²⁹ *ibid*

to actual improved enforcement however, happens to a varying degree, since it is influenced by myriad of other factors

5.3. Efficiency

Time efficiency

The respondents from the surveyed competition authorities were almost unanimous in that the Peer Review process was being managed efficiently with no significant delays. Zimbabwe was the only exception among the respondents: here due to the delays on the side of the funders related to the release of committed funds for the follow up activities, the TA part has not commenced as yet (NB; the new project by the EU mentioned earlier in the report, within the framework of which UNCTAD will provide TA to the competition authority with ITC funding will now address this situation). To note however, this does not reflect on the work of the UNCTAD unit per se, but perhaps on the overall funding/co-funding arrangement among the participating donor agencies, and it does seem to be a room for improvement here.

Synergies

Neither the representatives from the competition authorities nor the experts saw a risk in duplication in the assistance/work carried out by UNCTAD, ICN and OECD. The prime reason for this is that UNCTAD Peer Reviews are seen as of a different nature, much more practical, resulting in road maps for reforms. Only one interviewee (expert/reviewer) mentioned that at some stages there could be an overlap with the work of the ICN or OECD in terms of country reviews, suggesting that minimizing this duplication or working together on certain aspects may lead to efficiencies. There is evidence to suggest that on its part UNCTAD has demonstrated efforts to achieve such cooperation wherever merited. In the case of some countries, e.g. Ukraine, UNCTAD recommendations complemented the recommendations provided by the *Peer Review of competition law and policy in Ukraine*, implemented by the OECD in 2008. Many of the representatives of these agencies serve as experts (reviewers, revisers) for UNCTAD Peer Review process and the synergies happen through the informal networks as well.

Cost Effectiveness

In the view of several interviewees the budgets for the individual country Peer Review processes are overall small compared to the tasks which the Peer Reviews set, thus impacting on the length of the review time, time for training, etc. They thought that the Peer Review processes should be longer (to include an end of the cycle review after 2-3 years) and include a much more in depth technical assistance package, especially in the countries which demonstrate genuine commitment to reforms. Only one interviewee (expert/reviser) thought that the Peer Review processes are too resource intensive. It is true that almost half of the budget is allocated for the consultants and expert groups (see Table 2). At the same time the high quality of the UNCTAD Peer Review reports is a prized asset and is not to be sacrificed.

The program was highly effective in generating co-funding. As per October 2013, against the budget allotment of 276783.01 Euro the amount of “Fellowship, grants and contributions” was 102038.49, almost 50% (see Table 2).³⁰ The fact that UNCTAD Peer Review process

³⁰ NB: the rate of implementation of Project activities was 80.3% as of 08 October 2013. However, this figure does not take into account those Peer Review and follow-up activities funded from other sources which were mobilized as a result of the success of this Project. These include the services of experts to draft reports and the

has attracted funding other than the DA funding is both a testament to its success and a factor to support the effectiveness the Peer Review process. This has come as fully fledged funding for the Peer Reviews in two countries (funded by SECO and GIZ), but also as co- funding for particular events and experts. For example,

- in the case of *Mongolia*, the Federal Anti-Monopoly Service (FAS) of Russia funded one of its officers to become a member of the review panel at the Peer Review round table during the 12th IGE. Japan Fair Trade Commission (JFTC) funded the participation as a reviewer of one of its senior officers in the Peer Review round table in Geneva as well as in the dissemination event in 2012 in Ulaanbaatar. Similarly, the USA funded the participation of one of the reviewers in the Peer Review panel; and
- In *Seychelles*, the induction course for the Commissioners, and the training for case handlers of Fair Trading Commission (FTC), which were organized in March 2012 by UNCTAD, was co-funded by UNCTAD, COMESA and the Government of South Africa.

Many of the activities involved pro-bono or in-kind contributions. These included the services of the experts to draft reports and the participation of experts in some of the activities carried out to follow up on the recommendations of the Peer Reviews.

Table 2: Project Budget, December 2013

Description	Budget / Allotment	Actual disbursements	Commitments outstanding	Total Expenditure	Balance remaining
Consultants and experts groups	290,970.96	273,303.96	16,161.60	289,465.56	1,505.40
Travel of staff	92,266.21	65,125.84	4,609.30	69,735.14	22,531.07
Contractual Services	17,154.68	6,900.00	0.00	6,900.00	10,254.68
Operating Expenses	406.99	406.99	0.00	406.99	0.00
Participation in seminars	102,038.49	101,518.90	0.00	101,518.90	519.59
Total	502,837.33	447,255.69	20,770.90	468,026.59	34,810.74
100% (Budget/Expenditure)	93.3				

Source: Progress Report, 03/2014

UNCTAD has completed 9 Peer Reviews and initiated 3 Peer Reviews (in total 12 Peer Reviews) since the beginning of the Project: this number far exceeds the initial target of 4 Peer Reviews in four years by 8. In addition, follow-up activities to implement Peer Review recommendations were undertaken in 2 countries, Kenya and Indonesia, which were Peer Reviewed in 2005 and 2009

participation of experts in some of the activities carried out to follow up on the recommendations of the Peer Reviews.

5.4. Sustainability

Peer Review report

The sustainability of the project is supported by the Peer Review reports *per se* and the technical assistance wherever it was available. The evidence from the responses of the competition authorities suggests that most these agencies continue using the recommendations of the reports long after the projects are over. First and foremost it relates to the implementation of the legislative changes, but not only. For example:

- In Ukraine, during 2014-2015, it is planned to execute 40% of the recommendations provided by UNCTAD;
- In Pakistan a technical project implementation plan in collaboration with the UNCTAD is being prepared, the implementation of which will put the realization of the recommendations on a more sustainable footing.

Technical Assistance

The evidence from the responses of the competition authorities suggests that while they value the trainings and seminars conducted as part of the Peer Review processes, the needs in training and capacity building far exceed the offering. Most of the competition authorities do not have enough experience to implement some of the recommendations with solely their own means. This is the case even for Serbia and Ukraine, which are among the stronger competition authorities which had received assistance from UNCTAD. This highlights the point made earlier about the need for a more focus on the follow up technical assistance.

A number of experts interviewed as part of this evaluation thought that more should be done in helping to establish close “mentorship” ties between the competition agencies in developed and developing countries. This is thought to have a potential help with the costs in longer time perspective.

Awareness

The third building block in supporting the sustainability of the Peer Review process is related to higher priority attached to competition protection by the respective governments and increased awareness of the benefits of improved competition climate in the countries. All the respondents from the competition authorities confirmed the contribution of UNCTAD Peer Review process to this, albeit to different degrees. For example:

- In **Zimbabwe**, that sense of priority was clearly increased after the Peer Review process as evidenced by the interest shown by the Government. The visibility of the Commission, and its Government grant, has increased over the last two years. While it cannot be attributed to solely UNCTAD Peer Review process, since the Commission had already embarked on its advocacy and awareness campaign before the Peer Review process started, the latter has certainly contributed to the mentioned outcome. The setting up of the Inter-Organizational Committee to implement the Peer Review recommendations is also a sign of ownership by the national authorities. It was expected to have an impact on other development partners to get engaged to assist the country in its efforts to improve the competition regime and attract private investment and this expectation has materialized with the recent EU funded technical assistance project;
- In **Zambia**, there is evidence to suggest that after the UNCTAD Peer Review process there was more awareness and appreciation of competition law by various

stakeholders, including the government officials. The Commission also sits on a number of trade related Committees in the Government where it advises on competition related matters. This is seen as a sign that the Government has started appreciating the role of competition in the economy more. The competition authority concludes that greater number of complaints from the industry, which was observed following the Peer Review process points to an increased awareness also on behalf of the business community;

- In *Nicaragua*, the UNCTAD Peer Review process has sparked an interest in competition policy among the public organizations. As a result, relevant topics have been included in the Government agenda and more discussion and debates take place in various media outlets, including social media;
- In *Indonesia*, while the support from the central Government (policy makers) is yet to materialize (e.g. the lack of the support from the central government affects the allocation of resources to the competition authority and hence for the implementation of competition policy and law), and the competition policy is not yet seen as a major factor for the national medium and long-term development plan, an increased awareness could be observed emanating from the business community and there is more support from the Parliament;
- In *Ukraine*, the higher priority attached to competition policy is evidenced by the fact that the recommendations of the Peer Review were included in the draft of the National Economic Program for 2014-2024;
- In *Armenia*, the seminars and workshops conducted as part of the Peer Review process (e.g. seminars for judges on competition; roundtables for business community and NGOs on competition rules and state aid control principles; seminars for line ministries and other state institutions; roundtables for journalists on competition issues) have sparked a lively interest on behalf of the civil society organizations (CSOs), consumer groups and media associations, which put increasingly more pressure on the competition authority to perform better and thus help to keep the competition policy and its effective implementation under the spotlight;
- in *Pakistan*, there is some evidence pointing to increased awareness about the benefits and the role of competition policy: the improved public awareness activities, carried out by the competition authority had likely contributed to it;
- In *Mongolia*, the eventual appointment of new Board members of the competition authority during the Peer Review, as well as the establishment of an autonomous *Public Procurement Agency* are indicators showing that the Peer Review has contributed to a more attention from the government to improving the competition policy framework; and
- In *Seychelles*, the fast track Peer Review process has helped to generate an interest in the revision of competition and consumer protection laws as well as in the restructuring of the competition agency.

Funding

In some countries UNCTAD Peer Review process has clearly acted as a catalyst for other projects funded by international donor community. This was the case for Armenia (GIZ and the WB) for example. Also:

- In *Ukraine*, The EU has an ongoing project with the Ukrainian competition agency (AMCU): the peer review findings and recommendations will inform this technical cooperation between AMCU and the EU, and the project will increase the chances for the sustainability of the strengthening of competition law enforcement in Ukraine; Peer Review;
- In *Serbia*, the EU, which took part in the Serbia Peer Review, is funding the "Project for strengthening the institutional capacity of the Commission for Protection of Competition (CPC) in the Republic of Serbia". The Project included some of the UNCTAD Peer Review recommendations on competition policy in its programme. The 30-months Project is implemented by a consortium led by Deutsche GIZ. It started in September 2012 and will be completed in March 2015.
- In *Mongolia*, TIKA (competition authority of Turkey) has committed to continue funding the technical cooperation between Turkey and AFCCP: UNCTAD Peer Review recommendations for Mongolia will establish a basis for such cooperation efforts; and.
- In *Zimbabwe*, UNCTAD, in cooperation with the Competition and Tariff Commission of Zimbabwe, will implement the Peer Review recommendations within the wider EU Project "Trade and Private Sector Development" (01/ 2014- 06/ 2016). EU agreed to incorporate competition protection related activities in this project and UNCTAD will be the implementing agency for this part. At the time of writing this report, UNCTAD and ITC, the implementing agency for the project (except for the competition part) were working towards signing an agreement for the ITC to transfer the funds to UNCTAD.

While all of the above are very positive signs and international funding is and will be very much needed in these countries to support improvements in the climate for economic competition, more needs to be done by the national governments and more evidence is needed to show increased funding for these agencies. As testified by the third party reports and in the interviews with the representatives of the competition authorities and the experts, the lack of funding is one of the key weaknesses and threats to sustainability, impacting their independence and the ability to retain staff.

One of the ideas that were expressed by a number of the experts interviewed for this evaluation was to use different approaches to providing technical assistance under Peer Reviews, namely, beyond the minimum package, provide more sustained and in depth technical assistance to the competition authorities in those countries only, which will commit to increase the funding for these agencies.

External factors

The presence of strong external push-factors which necessitate reforms in the field of protection of economic competition plays an important role supporting not only the effectiveness of the Peer Review processes (in terms of implementation of the recommendations) but also sustainability. Serbia is one of the vivid examples here: the country's aspirations for joining the EU played an important role in achieving impressive results in improving the climate for the protection of economic competition. A similar case could be made for Ukraine. Several experts interviewed for this evaluation, argued that UNCTAD should be more active in looking for opportunities to embed the recommended reforms in other reform programs, reaching out more actively to development partners (some

of which might have more leverage) that are willing to lend their support for ensuring the implementation of the specific recommended activities.

6. CONCLUSIONS

The project implemented by the United Nations Conference on Trade and Development (UNCTAD), entitled: “*Strengthening capacities in developing countries for the effective enforcement of competition law to minimize constraints to economic productivity*” has been very successful in many regards.

The Peer Review process of competition laws and policies has been hailed for its competence and delivering practical recommendations with clear roadmaps for the countries. The capacities of the competition authorities were built in terms of equipping them with a high quality analysis of their competition protection frameworks, something they use for years as referral, as well as through the follow up technical assistance, wherever this was available, although the need for the latter is much greater than what was on offer. For many countries the reviews added the necessary clout for the nascent competition authorities in terms of dealing with their own governments, getting the latter appreciate more the role of supporting competition policy and its implementation. While this has resulted in increased awareness in many of the countries, the increased awareness is yet to materialize in terms of allocating adequate funding for the competition authorities.

The competition authorities were mostly effective in terms of acting upon the recommendations, initiating changes in the laws and procedures. Most of the latter were however in the process of review by the national parliaments at the time of writing this report. One of the lessons that could be learnt from UNCTAD Peer Reviews is that the reforms in the field of protection of economic competition take time and this understanding should be built into potential similar programs.

The project was planned initially to cover four countries and ended up covering 12 countries as more funding became available from other funding agencies, and there was more interest/request for peer reviews. The increased funding from development partners is the best indication proving the appreciation of UNCTAD Peer Review process by the development community. The follow up technical assistance was rated as very important by all the interviewed parties and the fact that for a number of countries there were delays in mobilizing the funding has meant that some of the expectations of the countries had not materialized, at least by the time of writing this report, and the important potential value-added to the reports had not happened.

The Peer Review processes in some countries, which have proved to become the “leaders” in their respective regions, had impacted the desire of the neighboring countries to catch up, with some of the experience sharing happening in the course of the projects. With the Tripartite Review for Zambia, Zimbabwe and Tanzania, UNCTAD Peer Review process has proved to have the potential to contribute to regional cooperation in the field of protecting economic competition. There were also cases whereby guidelines developed in one country have been used in other countries of a different region. With these examples, the Peer Review process has proven to be a dynamic exercise able to generate multiplicative and spillover effects

The level of ownership of the countries was overall high, but to be even more successful in terms of seeing reforms getting actually implemented more speedily and effectively, there should be more interconnectedness with other policies. The likelihood for the sustainability for of the assistance provided is high but of course depends on many factors and the political realities in particular.

7. RECOMMENDATIONS

The recommendations below summarize the opinions expressed by the expert practitioners involved as reviewers by UNCTAD interviewed as part of this evaluation as well as the feedback received from other interviewees; they also reflect the analysis of the evidence gathered as part of the evaluation:

- Coordinate better with other International Organizations, which help or plan to help the respective governments implement sectoral reforms related to the field of competition, to be able to add leverage on policy reforms;
- More focus on training and technical capacity building is very important in relation to enabling the countries to act on the recommendations from the Peer Review: the package of a more in-depth technical assistance has to be provided only if there is a clear commitment by the governments to implement the recommendations, including increased funding for the agencies;
- Support “mentoring” partnerships between the competition authorities from developing and developed countries, involving other agencies as key allies and partners in the Peer Review process. This could potentially create a sense of support and mentorship between agencies, which in the medium to long term could provide additional support;
- Incorporate a stage in the Peer Review process whereby the countries will report back to the IGE in 2-3 years' time after the assistance package is over. This will have to be accompanied by an independent review of the achievements as well as a self-report by the competition authorities concerned;
- Aim to distribute the Peer Review reports more widely in the countries ensuring that it reaches a wider circle of journalists, civil society groups and consumer unions; and
- Work together with the development partners (international organizations) to ensure that the delivery of the technical assistance, often funded outside the core funding for the Peer Review reports per se, is not delayed for too long, since it affects the expectations and perceptions of the competition agencies being assisted and may ultimately affect the effectiveness of the Peer Review process overall.

8. ANNEXES

Annex 1. Work plan

Three deliverables are expected out of this evaluation:

1. The current inception report, submitted December 17, 2103
2. A draft evaluation report. The first draft report will be presented to the Evaluation and Monitoring Unit and relevant stakeholders for quality assurance and factual corrections, if any: by March 6, 2014
3. The final evaluation report will be submitted by March 20, 2014. The final evaluation report will compose the following key elements (in line with the TOR):
 - Executive summary (maximum 3 pages);
 - Introduction of the evaluation, a brief description of the projects, the scope of the evaluation and a clear description of the methodology used;
 - Findings and assessments according to the criteria listed
 - Conclusions and recommendations drawn from the assessments.

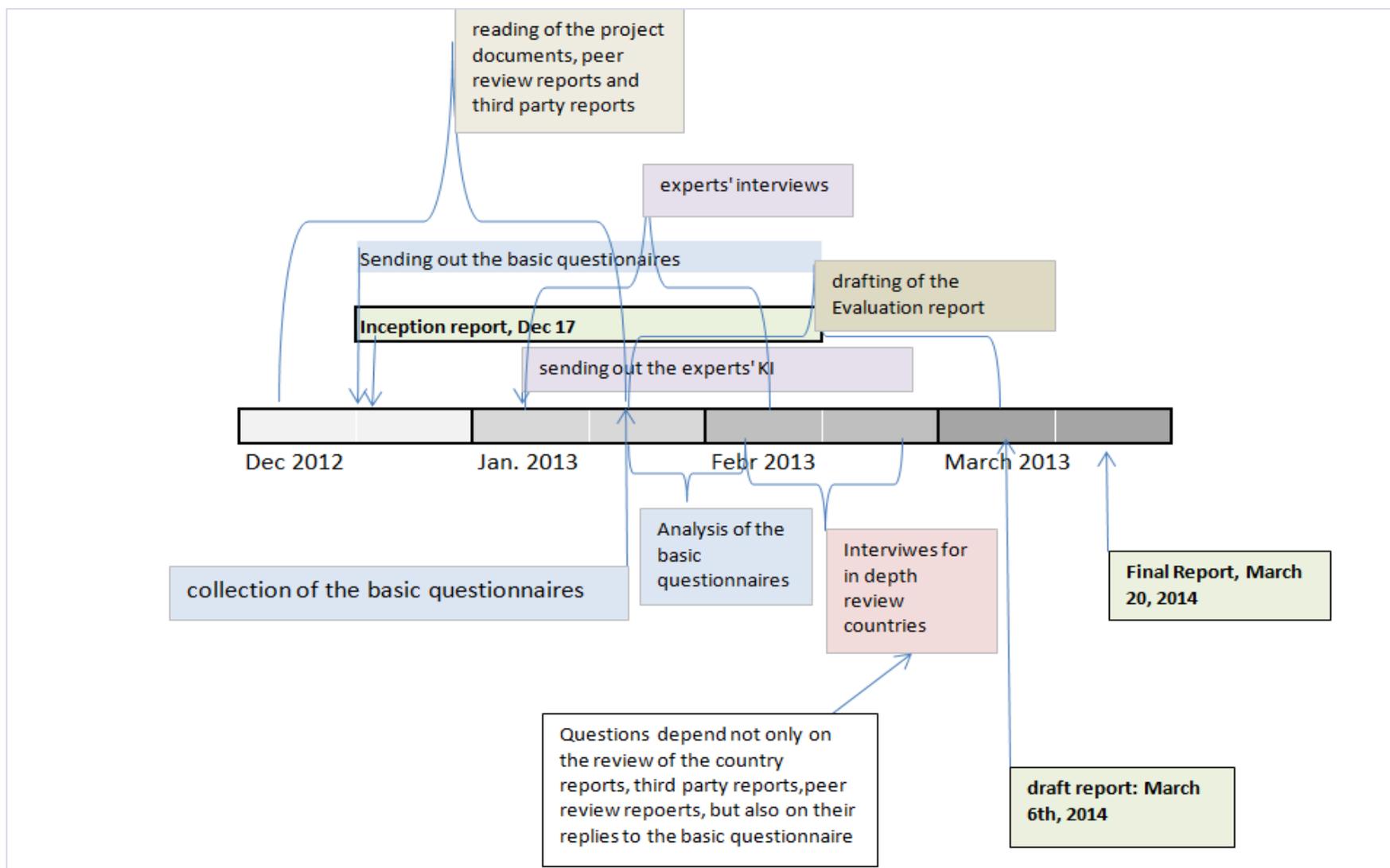
The total LOE (level of effort for the evaluation is equivalent to 21 days of work and will take place between the periods 25 November 2013 to 20 March 2014.

Table 3: Revised and agreed deadlines

Activities	Timeframe and deadlines
Desk Research and study of relevant documentation	December 17, 2013
Preparation of the Inception Report and data collection tools	December 17, 2013
Interviews with UNCTAD staff	Throughout the whole evaluation process
Other data collection activities	Throughout the whole evaluation process
Data Analysis and draft report write up	March 6, 2014
Final report write up	March 20, 2014

Figure 8 describes the Work plan for the Evaluation.

Figure 8: Work plan of the evaluation



Annex 2: Basic Questionnaire: for the competition agencies and the Ministries

A. Relevance of the Peer Review per se (all countries)

	Question	Answer	Notes
1	<p>Why did you decide to approach UNCTAD for the Peer Review?</p> <p><i>Please reflect on (a) the timing of the review, (b) its relation to other policies/reforms, (c) developments at that time in your competition agency; and (d) other potential factors?</i></p>	Please elaborate_____	
2	What was the <u>main</u> driving factor in approaching UNCTAD for the Peer Review?	Please elaborate_____	
3	Are you aware that other organizations such as the OECD, ICN, etc also offer Peer Review mechanisms?	Yes, no	
3a	If so, why did you choose UNCTAD compared to other Peer Review mechanisms (e.g. OECD)?	Please elaborate_____	

B. Relevance of the project designs (all countries)

	Question	Answer	Notes
4	<p>What do you think about the design (components) of the project (<i>typically comprising Peer Reviews per se, dissemination seminars/workshops, study tours, and formulation of technical assistance project to implement Peer Review Recommendations</i>)? Do you think it was appropriate and most effective?</p>	<p>Please rank</p> <p>1 not appropriate</p> <p>2</p> <p>3</p> <p>4</p> <p>5 most appropriate</p> <p>Please elaborate_____</p>	

5	Which of the project components/activities do you think was most useful for your agency?	Please elaborate _____	
6.	Which of the project components/activities do you think was least useful for your agency?	Please elaborate _____	
7.	What type of activity should the project design have included additionally?	Please elaborate _____	
8	Was the feedback of your agency sought during the project design stage?	Yes, No Please elaborate _____	
8(b)	If yes, where your comments reflected in the project design?	Yes, No, To some extent Please elaborate _____	
9	What do you think about the choice of other agencies consulted in your country in the Peer Review process?		
10	Do you have any suggestions in this regards for the future projects?		

C. Efficiency (all countries)

	Question	Answer	Notes
11	Were the activities carried out within the foreseen timeframe?	Yes/no	

11a	If not, what led to the delays?	Please bring examples and elaborate _____	
12	How would rank the project management modalities (e.g. procurement, administration rules, and alike) by UNCTAD?	Not efficient Somewhat efficient Mostly efficient Very efficient Please elaborate what to you like and dislike most in the project management modalities of UNCTAD _____	
13	What suggestions do you have for improving the project management modalities by UNCTAD?	Nothing Some element Please elaborate _____	
14	How would you rate the communications with UNCTAD throughout the process of the project?	Very efficient Mostly efficient Somewhat efficient Not efficient Please elaborate _____	

D. Effectiveness (only Armenia, Ukraine, Indonesia, Serbia, Mongolia, Tanzania, Zambia, Zimbabwe, Pakistan and Nicaragua)

	Question	Answer	Notes
15	Did the project contribute to building of the capacity of your agency in implementing its mandate (policy making, enforcement)?	Yes, no	
15a	If yes, how?	Please bring examples	
15b	If not, why?	Please elaborate	
16	Did the UNCTAD Peer Review process <u>improve your understanding</u> of the strengths and weaknesses of the country competition policy and legislation?	Yes, No, To some extent	
16a	If yes, then how	Please elaborate	
16b	If not, then why?		
17	Did the UNCTAD Peer Review process contribute to enabling you to better address the weaknesses of the country competition policy and legislation?	Yes, no	
17a	If yes, then how?	Please bring examples	
17b	If not then why?	Please elaborate	
18	Is your agency satisfied with the quality of the outputs of the project?	Not Satisfied Somewhat satisfied Mostly satisfied Very satisfied Please elaborate	

19	Which of the project outputs and activities was most useful for your agency in implementing its mandate and why?	Please elaborate _____	
20	Which of the outputs was least useful for your agency in implementing its mandate and why?	Please elaborate _____	
21	Has your agency used the reports/outputs produced? How?	Yes No To some extent Please elaborate _____	
20a	If yes, then how?	Please elaborate with examples (with dates) _____	
20b	If not then why?	Please elaborate _____	
21	Have there been any unintended positive outcomes of the UNCTAD Peer Review process?	Please elaborate _____	
22	Have there been any unintended negative outcomes of the UNCTAD Peer Review process?	Please elaborate _____	
23	What do you see as the role of your agency in the implementation of the project, i.e. conduct of the Peer Review?	Please elaborate _____	
24	What resources (human, financial, other) has your	Please elaborate	

	agency contributed to the project implementation, i.e. conduct of the Peer Review?	_____	
25	Roughly what percent of the recommendations from the Peer Review process have been implemented _____%	_____% Please elaborate _____	
26	Roughly what percent of the recommendations from the Peer Review process are planned to be implemented in the near future (<i>next 1-2 years</i>)?	_____% Please elaborate _____	
27	Are there any recommendations which you will NOT be implementing?	Yes no	
27a	If, yes then what type and why?	Please elaborate _____	

E. Sustainability (only Armenia, Ukraine, Indonesia, Serbia, Mongolia, Tanzania, Zambia, Zimbabwe, Pakistan and Nicaragua)

	Question	Answer	Notes
28	Will the Peer Review Report produced by UNCTAD be used by your organization?	Yes No	
28a	If yes then how and what actions, if any have you (a) already undertaken for that and (b) planned for the near future (next 1-2 years)?	Please elaborate a) already undertaken _____ b) planned for the near future	

28b	If not then why?	Please elaborate _____	
29	Are there any obstacles that make it difficult for your agency to take follow up actions in implementing the recommendation of the Peer Review process?	Yes/No/To some extent Please elaborate _____	
30	Is competition given a high priority in the area of trade policy, investment and development strategy after the UNCTAD Peer Review process?	Yes/No/To some extent Please elaborate	
31	Were there changes in the awareness about benefits and the role of competition policy in allocation of resources in the country?	Yes/No/To some extent Please elaborate	

Annex 3: Questionnaires for the Competition Experts

(by Skype, telephone)

	Question	Answer	Comments
1	Where you involved in any of the UNCTAD Peer Review projects? If yes, in what capacity?		
2	What did you like most about UNCTAD's work in this area? What did you like least about UNCTAD's work in this area?		
3	What are the key difference of the UNCTAD Peer Review process compared to other similar Peer Reviews (ICN, OECD, etc), in your view?		
4	What are the advantages of the UNCTAD Peer Review process in terms of effectiveness and sustainability as compared in the context of this comparison? What are the disadvantages?		
5	What are the most effective aspects of the design of the UNCTAD per review projects?		
6	What are the least effective aspects of the design of the UNCTAD Peer Review projects?		
7	What, in your view, should UNCTAD change in its approach towards strengthening the capacity of national competition authorities to enforce competition law more effectively?		

8	What do you think about the choice of other agencies consulted in the countries of the Peer Review process? How effective and relevant this approach is?		
9	What should UNCTAD change in its approach to the selection of agencies to be consulted in the Peer Review process?		
10	What do you think about the types of project activities supported by UNCTAD Peer Review process? What would you recommend to be changed in the project management modalities by UNCTAD (e.g. more focus on training, technical capacity, etc)?		
11	Do you think there is a strong country ownership of the Peer Reviews and processes in the beneficiary countries? Please elaborate		
12	<p>What do you think about the likelihood of sustainability of the outcomes and impact of Peer Review process (most likely scenarios) in the beneficiary countries? Why do you think so?</p> <p><i>Here the "process" includes, the report itself, implementation of its recommendations, and the technical assistance and capacity building activities carried out as a follow up to the Peer Review recommendations</i></p>		
13	Is there anything that UNCTAD should do to increase the likelihood of sustainability?		
14	What do you think about the likelihood of impact of		

	<p>the Peer Review process in the beneficiary countries (most likely scenarios)? Why do you think so?</p> <p><i>Here the "process" includes, the report itself, implementation of its recommendations, and the technical assistance and capacity building activities carried out as a follow up to the Peer Review recommendations</i></p>		
15	Is there anything that UNCTAD should do to increase the impact?		
16	Any other comment that would be of a benefit for the evaluation?		

Annex 4: Interview guide for In-depth Review (6) Countries

			Competition agency	Ministry	Consumer protection Body	Judiciary	Business Community	Civil Society (NGOs in consumer protection)
1	Did the UNCTAD Peer Review process improve your understanding of the strengths and weaknesses of the country competition policy and legislation? If yes then how, and if not then why?	Please elaborate with examples	<i>Survey of competition authorities</i>	<i>Survey of competition authorities</i>	x	x	x	x
2	Did the UNCTAD Peer Review process enable you to better address the weaknesses of the country competition policy and legislation? If yes then how, and if not then why?	Please elaborate with examples	<i>Survey of competition authorities</i>	<i>Survey of competition authorities</i>	x	x		
3	Were there changes in the substantive and procedural aspects of competition law in your country as a result of the UNCTAD Peer Review process?	Please elaborate with examples	x	x	x	x	x	x
4	Did the UNCTAD Peer Review process enable you to better enforce competition law? If yes then how, and if not then why?	Please elaborate with examples	x	x	x	x		
5	Was there any change in the understanding of competition law benefits in the business community to which it could be claimed that UNCTAD Peer Review has contributed? If yes then how, and if not then why?	Please elaborate with examples	x	x	x	x	x	x
6	Was there <i>any change</i> in the rate of voluntary compliance to competition law to which the project has contributed? If you do not have	Please elaborate with examples	x	x	x	x	x	x

			Competition agency	Ministry	Consumer protection Body	Judiciary	Business Community	Civil Society (NGOs in consumer protection)
	reliable measure before and after, please respond accordingly.							
7	Is competition given a high priority by the Government in the area of trade policy, investment and development strategy after the UNCTAD Peer Review process?	Please elaborate with examples	<i>Survey of competition authorities</i>	<i>Survey of competition authorities</i>	x	x	x	x
8	Were there changes in the awareness within the Government about benefits and the role of competition policy in allocation of resources in the country?	Please elaborate with examples	<i>Survey of competition authorities</i>	<i>Survey of competition authorities</i>	x	x	x	x
9	: Did the UNCTAD Peer Review contribute to the strengthening of the enforcement structure and institutions in your country? If yes, how?							
10	Are there any examples where it could be claimed that the UNCTAD Peer Review process contributed to effective law enforcement? If yes, then in which way was this contribution?							
10a	If yes, are there any examples where it could be claimed that the better enforcement resulting from this better enforcement has led to eliminating anticompetitive business practices? If yes, how?	Please elaborate with examples	x	x	x		x	x
11	Are there examples whereby it could be claimed that specific markets function more effectively since the end of project and that INCTAD Peer Review has contributed to it? If yes, then in which way was this contribution?	Please elaborate with examples	x	x	x		x	x
12	Are there examples of product and/or services markets where there is more diversity, fairer prices and better quality since the end of the UNCTAD Peer Review, to which, it be claimed	Please elaborate with examples	x	x	x		x	x

			Competition agency	Ministry	Consumer protection Body	Judiciary	Business Community	Civil Society (NGOs in consumer protection)
	that the Peer Review has contributed to? If yes, then in which way was this contribution?							
13+----	TO BE AMMENDED WITH COUNTRY SPECIFIC QUESTIONS							