

**Intergovernmental Group of Experts on Competition
Law and Policy**

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Roundtable on:
**Modalities and Procedures for International
Cooperation in Competition Cases Involving
more than one Country**

**Contribution
by
SADC**

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QUESTION

Do you have case reporting guiding rules which stipulate areas of focus or prioritise specific anti-competitive conduct; such as cartels, abuse of dominance or mergers?

ANSWER

1. The legal framework for cooperation among SADC Member States in the area of competition is Article 25 of the Protocol on Trade, specifically the Declaration on regional cooperation in competition and consumer policies signed by Heads of State and Government in 2009. The Declaration calls upon Member States to cooperate in the implementation of their competition laws. This arises from the realization that competition laws are national but relevant markets can extend beyond national boundaries, hence the need for cooperation efforts in order to deal with cross-border anti-competitive practices which are increasing as a result of regional integration.

2. As part of the on-going activities to enhance cooperation among Member States in the enforcement of their respective competition laws, in 2012 SADC developed an online competition case resource database. The database is hosted on the SADC platform and use the SADC website domain: <http://www.sadc.int/competitioncases>. This is a log in database and access for now, is restricted to employees of competition agencies and SADC Secretariat. Access to the public will be opened in due course after a safeguard mechanism on confidentiality of competition cases information is put in place.

3. Some of the key objectives of the database are to:

- i. Act as a central repository of information on both on-going and resolved cases, especially cases of interest,
- ii. Promote collaboration and cooperation on cross-border cases, eg. Making it easier to find out if the same parties/cases are being investigated by different agencies, repeat offenders, etc, and
- iii. Provide easy access to case information and best practice in a user friendly fashion with search capability.

4. There are case reporting guiding rules which stipulate information format for cases that have to be uploaded into the SADC online case resource database. Competition agencies are required to upload information on; case reference number, the parties involved, summary of case, jurisdiction (whether single or multiple), countries involved, case type, industry, products, status (ongoing or resolved), resolution eg, details of judgement or admission or settlement, etc.

5. There is no priority on specific anti-competitive conduct. Member States agreed to report on any case type, such as cartels, abuse of dominance and mergers. However, considering that competition agencies handle a variety of cases and complaints on

possible anti-competitive arrangements, conduct and practices, cases to be reported have to meet selection criteria.

6. Member States agreed to a set of criteria/factors to guide them in selecting cases for reporting. Some of the criteria include;

- i. Big cases; Importance of the companies, industry and relevant market plus the number of potentially affected consumers. For example, the size and contributions of the industry and affected companies to the national and regional SADC economy.
- ii. Cases with cross-border implications. Such cases would allow competition agencies within the SADC region to test, employ and refine their analytical methods and information sharing, joint enforcement and other cooperation practices that are important to enforcement cases with cross border implications. Cross-border cases will more often involve complex interactions and possible conflicts between trade and competition, innovation and competition, and industrial and competition policies, and therefore would help to build SADC specific experience and expertise on these interactions and their implications for SADC market integration.
- iii. Cases that build enforcement case experience, analytical skills and case law across all aspects of competition law.

7. The database currently has over fifty competition cases, relevant documents such as SADC best practice guidance documents, competition reference manual and database user manuals.

8. Several suggestions for future enhancement have been made and these include;

- i. Providing a public access part where the public can access information about cases
- ii. Public users to be able to register competition complaints. A similar system already exists at the Secretariat in the area of non-tariff barriers (NTBs). SADC, COMESA and EAC have an online NTB reporting and monitoring mechanism.
- iii. Provide the ability to be able to post other information and documents such as market studies undertaken, all the different legislation of the competition agencies as well as regulations and any other pertinent documents
- iv. Creation of a discussion forum where the competition agencies can discuss, exchange information and strategies on different aspects of competition law and regulation especially for certain industries as this will also encourage greater collaboration and cooperation.

9. Although the database is still in the pilot stage, experience to date shows that it has the potential to be a powerful instrument of regional cooperation within the SADC region.

QUESTION

Do you have working groups from competition agencies working on enhancing exchange of information at pre-investigatory phase especially when agencies are investigating the same case/conduct? If not, is this something you would consider?

ANSWER

1. We do not have working groups at the regional level, meeting regularly and working on enhancing exchange of information at pre-investigatory stage. The Declaration on regional cooperation in competition and consumer policies provides for the establishment of a competition committee to facilitate cooperation and information exchange. The competition committee was established in 2009 and it meets once a year.
2. The committee comprises representatives from consumer institutions, government departments (in countries without competition/consumer agencies) and competition agencies. If this committee was meeting regularly, it would have assumed this responsibility, but in the form of a sub-committee comprising competition experts.
3. The Committee as currently constituted, serves as a forum for ;
 - i. Fostering cooperation and exchange of best practices in the application of Member States' respective competition laws
 - ii. Fostering dialogue on key competition issues aimed at encouraging common understanding
 - iii. Facilitating and coordinating capacity building and technical assistance
4. The idea of working groups to work on enhancing exchange of information at pre-investigatory stage is very good. This is something we need to seriously consider. With the deepening of regional integration, a growing number of transactions have a regional dimension. Countries need to cooperate and where possible conduct joint investigation in dealing with cross-border anti-competitive practices.
5. One of the options available to SADC, is to establish a sub-committee comprising competition experts which meets regularly and working on enhancing exchange of information at pre-investigatory stage. Alternatively, an ad-hoc committee can be established.
6. SADC looks forward to learning from the other regional groupings with such arrangements.

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