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EXTERNAL INDEPENDENT EVALUATION REPORT OF THE PROJECT ON INTELLECTUAL PROPERTY AND COMPETITION POLICY

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1. The Annex to this document contains an External independent Evaluation Report of the project on Intellectual Property and the Competition Policy (CDIP/4/4/REV) undertaken by Mr. Sisule F. Musungu, President, IQsensato, Geneva.

2. *The CDIP is invited to take note of the information contained in the Annex to this document.*

[Annex follows]

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EXECUTIVE SUMMARY

This independent external evaluation of the World Intellectual Property Organization (WIPO) Development Agenda Project on Intellectual Property (IP) and Competition Policy (“IP and Competition Policy Project”) was commissioned to provide an opportunity to the WIPO Member States, the Secretariat and other WIPO stakeholders to learn from experiences during project implementation and provide evidence-based evaluative information in order to inform the design and execution of any future activities in this field and to support decision-making in the Committee on Development and Intellectual Property (CDIP). In specific terms, the external evaluation assessed the extent to which the Project:

1. Increased the understanding of the interface between IP and competition policy among policy-makers;
2. Promoted pro-competitive IP licensing practices; and
3. Provided opportunities for exchange of national and regional experiences.

The evaluation was carried out between 1st February 2012 and 15th March 2012.

Two main methods and tools were used to collect data for the evaluation exercise. The first involved desk review of relevant project related documentation, including the project framework (initial project document), progress reports, monitoring information and other relevant documents, including studies and surveys. The second involved stakeholder interviews and e-mail administered questionnaires.

A total of 21 individuals/organizations/Member States were requested for interviews or asked to respond to the questionnaire. Out of those, nine (9) individuals/organizations/Member States granted interviews or responded to the questionnaire representing 42.9% response rate. While the sample of respondents may be considered relatively small it did not have an adverse effect on the evaluation or its findings. The document review carried out for the evaluation, which included reviewing CDIP reports and meeting/mission reports, allowed the evaluator to review feedback on the project and its outputs from a much broader group of Member States and observers.

Based on the findings (reported in Part 2 of the Report) a number of conclusions were reached with respect to the design and management of the project and its overall results so far. Some lessons learned are also highlighted. The conclusions are grouped into two categories, namely, conclusions relating to the project design and management on the one hand and those related to the project results on the other. The conclusions on overall results relate to whether the Project fulfilled the objectives set out in the Project document (CDIP/4/4 REV).

With respect to project design and management the conclusions are that:

1. The joint effort of Member States and the Secretariat, through discussions in the CDIP, to design the Project paid off resulting in a well-designed initiative. The Project document was sufficient to provide guidance to the Secretariat in the project implementation work and to provide a reasonable framework for discussions on progress in the CDIP as well as for evaluation. One criticism of the Project from respondents was that there was limited external coordination that would have ensured closer partnerships with other relevant international organizations, including the United Nations Conference on Trade and Development (UNCTAD), the World Trade Organization (WTO) and the

Organization for Economic Cooperation and Development (OECD). It would appear, however, that the design of the Project and the nature of activities, such as surveys of Member States laws, constrained how far coordination with external agencies could go. Efforts, however, are now underway with the new IP and Competition Division to enhance cooperation with other relevant agencies through an informal IP and Competition Interest Group.

2. The Project was quite well managed both in terms of activity planning and execution, reporting to the CDIP and resource utilisation as well as coordination within the Secretariat.

With respect to the project results the conclusions are that:

1. Overall, the Project, over the two-year period, has been instrumental in enhancing the understanding of policy-makers on the interface between IP and competition, including resulting into concrete outcomes such as IP offices and competition authorities in a number of countries signing Memorandums of Understanding (MoUs). There has also been a discernible rise in the level of debate on IP and competition in the CDIP and in WIPO generally and the project allowed several hundreds of policy makers and experts to explore the relationship between IP and competition in various events. Most stakeholders who participated in Project events saw them as both informative and useful.

2. The evaluation could not establish whether the Project had had any impact on the industry licensing practices, that is, whether it had contributed to an increase in pro-competitive licensing practices.

3. The Project succeeded in providing effective opportunities for exchange of national and regional experiences as well as sharing of insights on the interface between IP and competition policy. In an area that is particularly new and under explored in developing countries and least developed countries (LDCs) this was a major achievement for the Project.

4. The Project has generated new momentum and increased interest on the subject among WIPO Member States. The work under the Project was also instrumental and appears to have informed the decision of the WIPO General Assembly to establish a work program on IP and competition under the 2012/2013 Program and Budget (P&B) backed by a new IP and Competition Division in the Secretariat.

Regarding recommendations the Report does not make any specific recommendations with respect to direction or scope of future work. Rather, it leaves it to the CDIP and the relevant stakeholders to make such decisions. The only recommendations made relate to evaluation framework and the timing of evaluations based on the experience of the evaluator in undertaking this exercise. This has been done since this one of the first external evaluations of Development Agenda projects. In this context, the report recommends that:

1. The practice of establishing an evaluation framework as part of projects should be continued if any further projects in this area are developed or as a general rule for Development Agenda projects.

2. To avoid the self-evaluation exercises being more or less the equivalent of progress reports, it is recommended that for projects of two years or less there only be one end of project self-evaluation. Once the Committee has reviewed the self-evaluation a decision can then be made on whether an independent external evaluation is needed. This approach is more realistic and will likely produce better results as well as ensure that any external independent evaluation is undertaken sometime after all project activities and outputs are complete.

1. INTRODUCTION

This Evaluation Report contains the results of an end of project external and independent evaluation of the World Intellectual Property Organization (WIPO) Development Agenda Project on Intellectual Property (IP) and the Competition Policy (hereinafter “IP and Competition Policy Project”). The approved Project is described in WIPO document CDIP/4/4 Rev.¹ The Evaluation was carried out between the 1st of February 2012 and the 15th of March 2012. The evaluation process was based on the approach and steps laid out in the approved Inception Report dated 1st of February 2012.

1.1 PURPOSE AND SCOPE OF THE EVALUATION

The purpose of this external evaluation of the IP and Competition Policy Project is two-fold. First, it is intended to provide an opportunity to the WIPO Member States, the Secretariat and other WIPO stakeholders, an opportunity to learn from experiences during project implementation, including learning from what worked well and what did not work well in order to inform the design and execution of any future activities in this field. Second, the evaluation is aimed at providing evidence-based evaluative information to support decision-making process the Committee on Development and Intellectual Property (IP).

The evaluation covers the whole Project period, which was two (2) years: (January 2010 – December 2011). In terms of scope and focus, the objective is to evaluate the project as a whole and its contribution to enabling policy makers, particularly in developing countries and least developed countries (LDC’s) to better understand the interface between intellectual property rights (IPR’s) and competition policies, its evolution over time, its performance including project design, project management, coordination, coherence, implementation and results achieved rather than on assessing individual activities.

The external evaluation therefore assessed the extent to which the Project:

- (a) Increased the understanding of the interface between IP and competition policy among policy-makers;
- (b) Promoted pro-competitive IP licensing practices; and
- (c) Provided opportunities for exchange of national and regional experiences.

1.2 EVALUATION METHODOLOGY

To provide a good basis for learning and evidence-based information for decision-making, the evaluation, by design, was intended to be participative providing for the

¹Available in all WIPO official languages
at http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=131423.

involvement of those with a stake in the project, including Member States, the Secretariat, beneficiaries, partners and other interested parties, including observers at WIPO. The evaluation approach taken in conducting the evaluation was therefore a participatory and outcomes-oriented approach with a view to identifying the results/outcomes of the project activities, as opposed to evaluating activities and outputs *per se*.

It is important to remember, in discussing the evaluation methodology, that the Project, from the on-set, was designed to include an evaluation component. In this regard, in addition to the possibility of an external evaluation, the project was developed with an in-built self-evaluation framework. Two (2) self-evaluation exercises were therefore undertaken during the project period. The results of the first self-evaluation exercise were reported in WIPO document CDIP/6/2 (dated October, 1 2010)² and the second in document CDIP/8/2 (dated October, 4 2011)³. Both self-evaluation reports were discussed by the CDIP.

The methodology and actual evaluation process in this independent evaluation therefore took into account the results of these self-evaluation exercises and the ensuing discussions in the CDIP.

However, the findings and conclusions of this Report were not directly linked to or constrained by the self-evaluation reports.

Two (2) main methods and tools were used to collect data for the evaluation exercise. These were the following:

1. Desk review of relevant project related documentation including the project framework (initial project document and studies), progress reports, monitoring information, mission reports and other relevant documents as well as CDIP meeting reports. A list of key documents reviewed for this evaluation is provided in Appendix III to this Report.
2. Stakeholder interviews and e-mail administered questionnaires focusing on the, project implementation team at the WIPO Secretariat, Member States (with a mix of capital-based officials and Geneva-based delegates and a mix of developed/developing countries), Observers (including intergovernmental organizations, civil society organizations and industry/private sector representatives). A copy of the interview guide/questionnaire is attached to this Report as Appendix IV.

Due to the limited time available for the evaluation and the size of the project a broad-based public online survey or other data collection methods such as focus group discussions were not considered viable for this evaluation.

In terms of respondents/informants (those interviewed or responding to questionnaires) a relatively small but representative sample was chosen. A total of 21 Individuals/institutions/Member States were requested for interviews or asked to respond to the questionnaire. Out of these a total of nine (9) granted interviews or responded to the questionnaire representing approximately 43% response rate. Overall, an effort was made to ensure that the respondents and feedback received represented developing countries and developed countries views, the Secretariat

²Available at http://www.wipo.int/edocs/mdocs/mdocs/en/cdip_6/cdip_6_2.pdf.

³Available at http://www.wipo.int/edocs/mdocs/mdocs/en/cdip_8/cdip_8_2.pdf.

views, the views of civil society, industry/private sector views and the views of partner international organizations.

The relatively small sample of respondents did not, however, have an adverse effect on the evaluation or its findings. This is mainly because of the rich discussions (recorded in CDIP reports) during the presentation of the results of the self-evaluation exercises and the various project outputs in the CDIP. The document review carried out for the evaluation, which included reviewing CDIP reports and meeting/mission reports and other documents, therefore allowed the evaluator to review feedback on the project and its outputs from a much broader group of Member States and observers.

1.3 KEY EVALUATION QUESTIONS

A set of key evaluation questions guided the evaluation exercise, including the design of the questionnaires. The questions covered project design and management, effectiveness and sustainability. These key questions were the following:

1.3.1 Project design and management:

- (a) How appropriate was the initial project document as a guide for project implementation and assessment of results achieved?
- (b) Were the project monitoring, self-evaluation and reporting tools useful and adequate to provide the project team and key stakeholders with relevant information for decision-making purposes?
- (c) To what extent did other entities within the Secretariat contribute and enable an effective and efficient project implementation?
- (d) To what extent were the risks identified in the initial project document materialise and, if they did, how were they addressed or mitigated?
- (e) Was the Project able to respond to emerging trends and other external forces?

1.3.2 Effectiveness:

- (a) How effectively were IP and competition policy issues included into WIPO training programs?
- (b) How useful were the symposia, meetings and events organized for relevant stakeholders, including IP offices and competition authorities, under the Project?
- (c) Was the communication about the Project and its activities effective?
- (d) Were the studies and surveys useful for the Member States and other stakeholders and how have these been used?

1.3.3 Sustainability of project results:

- (a) What is the likelihood for continued work on IP and competition policy by WIPO and Member States?
- (b) Has sufficient momentum been built for further work in this area?

1.4 PERFORMANCE CRITERIA

There were three main aims (objectives) of the Project on IP and Competition Policy (Document CDIP/4/4 REV.). These were to:

- (a) Enable policy-makers, particularly in developing countries and LDCs, to better understand the interface between IPRs and competition policies;
- (b) Promote pro-competitive IP licensing practices; and
- (c) Provide an opportunity for the exchange of national and regional experiences and information on the links between IPRs and competition policies.

These objectives are derived from and, linked to Recommendations 7, 23 and 32 of the Development Agenda respectively.⁴

The project evaluation criteria set out in the project document contained both output and outcome indicators. The self-evaluations undertaken in 2010 and 2011, however, mainly focused on the output indicators. Because this external evaluation is outcomes-oriented with a focus on the results/outcomes of the project activities, as opposed to evaluating specific activities and outputs, the performance criteria used focused primarily on the project outcome indicators as set out in the project document with the necessary modifications to enrich the evaluation.

In effect, the evaluation exercise sought, based on the answers to the key evaluation questions above, to evaluate whether:

- (a) The understanding of policy-makers on the interface between IP and competition was enhanced by the Project.
- (b) Whether pro-competitive IP licensing practices were promoted (increased) by the Project.
- (c) Effective opportunities for exchange of national and regional experiences on IP and competition were availed to Member States and other stakeholders.
- (d) Through the Project, sufficient momentum and interest was built around IP and competition issues for continued work in WIPO and by Member States.

⁴The 45 Development Agenda Recommendations are available on the WIPO website at <http://www.wipo.int/ip-development/en/agenda/recommendations.html>.

The evaluation matrix in Appendix II sets out the key issues (objectives) with the relevant performance indicators, the data collection tools in each case and the key informants.

1.5 ORGANIZATION OF THE REPORT

The Report is organised into five (5) main parts. In addition to the executive summary and this introductory part, there are three substantive parts containing the findings (Part 2), the conclusions and lessons-learnt (Part 3) and the recommendations (Part 4). There are also four (4) appendixes to the Report providing additional information regarding the evaluation process and the results, including a summary of the evaluation results (Appendix I), the evaluation matrix (Appendix II), the list of key documents consulted during the evaluation (Appendix III), and a copy of the interview guide/questionnaire used to collect data from key informants (Appendix IV).

2. KEY EVIDENCE-BASED FINDINGS

The following findings were arrived at following the document review and the collation and analysis of the feedback from the interview/questionnaire respondents. The findings relate to four main issues, namely project design and management, effectiveness, evidence of results, sustainability of project results, including the need for further work in the area of IP and competition policy.

These findings should be read in the context of a number of caveats, which apply to them. Consequently, before reporting on the findings we highlight a few caveats.

To start with, since the Project was implemented through various activities it was understood from the onset that the interview/questionnaire respondents may not have participated or may not be aware of all the project activities and outputs. For this reason during the interviews or in responding to the questionnaire respondents were allowed to indicate that they could not assess a particular aspect of the project or respond to a question. This was done either by specifically indicating that the respondent could not assess a specific aspect or leaving the question blank. In the findings presented below "Can't Assess" or blank answers were not included in the percentage calculations except in cases where the inability of respondents to assess results appear to do with something more than respondents simply not being aware or not having participated in certain activities. The percentages therefore represent those who actually answered the questions except where stated otherwise.

Second, as noted in the methodology section of this Report, the evaluation is based not only on the interviews/questionnaires administered during the evaluation period but also on document review, including the feedback provided by Member States and observers and reported in the CDIP minutes. This is the case except in the case of the evaluation of the project design and management, which is solely based on the interview/questionnaire responses.

Finally, while this was supposed to be an end of project external evaluation, not all the components of the project had been completed and presented to the CDIP or disseminated by the time of the evaluation. For example, the brochure on licensing is still under preparation and two of the studies are being revised to incorporate Member States comments and suggestions in previous CDIP meetings. This means

that the assessment of results of the Project cannot, at this stage, be seen as definitively complete or comprehensive.

2.1 PROJECT DESIGN AND MANAGEMENT

The project document was initially generated by the Secretariat. However, the final project document (document CDIP/4/4 REV.) resulted from extensive discussions and consultations with and among the WIPO Member States and it was subject to consensus approval by the CDIP. This means that the project design was a collaborative effort between the Member States and the Secretariat and the project document is fully owned by the membership. Because of the process by which the document was developed, it is important, for purposes of evaluation, that we separate the evaluation of the project design (as contained in the Project document CDIP/4/4REV.) and the actual project management, which was primarily the responsibility of the Secretariat during the two (2) years.

With respect to the project design the evaluation assessed two main aspects of the project document. First, it assessed the project document as a guide for the project implementation and assessment of results. Second, it assessed the suitability of the project monitoring, self-evaluation and reporting framework for providing information for decision-making particularly by the CDIP.

A large majority (87.5%) of the interview/questionnaire respondents ranked the design of the project document as a guide for implementation and assessment as either excellent or good. The remainder (11.5%) ranked the project document as poorly designed. The positive reviews were because the initial project document clearly described the Project, its objectives and its components with timelines and framework for assessing the results. The strength of the document was also attributed, by some respondents, to the fact that the draft project document benefited from thorough and detailed discussions in the CDIP. There was concern, however, among some respondents, that the project scope was too narrow and "only focused on licensing".

Regarding the suitability of the project document as a monitoring, self-evaluation and reporting framework, the results from interviews and responses to the questionnaire were as follows: 80% ranked the document as either excellent or good; and 20% as fair. Overall, it was appreciated that because of the design of the monitoring, self-evaluation and reporting framework, the project document allowed the CDIP to be actively involved in the implementation process as the said framework assured transparency.

In the case of project management, three main aspects were evaluated. The first was the level of coordination within the WIPO Secretariat, the second risk management and mitigation strategies and the third, the project's ability to respond to emerging trends and external forces. Regarding coordination the majority of the respondents who answered the relevant question (80%) rated the coordination as good with the remaining 20% rating coordination as excellent. Although various WIPO sectors, in addition to the Development Agenda Coordination Division (DACD), were involved in implementation there was a high level of coordination and collaboration within the Secretariat that ensured effective and efficient implementation. With respect to risk management and mitigation strategies 66.7% of the respondents rated the performance as either excellent or good and the remaining

33.3% as fair. Finally, with respect to the project's ability to respond to new trends and external forces 83.3% of the respondents rated the projects performance as excellent or good. The remaining 16.7% thought that the performance on this aspect was fair.

When asked what could have been done better with respect to project design and management, respondents made a number of pertinent suggestions. It was suggested that if further projects are to be developed or further work is undertaken in this area it is important to ensure that:

- (a) There are early consultations with Member States on the scope of work, including selection of topics to be studied or surveys to be undertaken.
- (b) The self-evaluation exercises are qualitative and go beyond simply indicating the status of project implementation.
- (c) Efforts are made to get only properly qualified consultants to undertake studies in this complex area. Draft studies should also be properly reviewed before presentation to the CDIP or finalisation, including providing sufficient opportunity for Member States whose laws or practices have been the subject of a study to review any drafts.
- (d) The scope of beneficiaries is expanded beyond IP offices and competition authorities to involve consumers and industry.
- (e) Government agencies are not overstretched by focusing on fewer outputs and activities. In particular, it was noted that the large number of questionnaires and surveys under the Project required government agencies to spend a significant amount of time and resources to respond, which resources are not readily available.
- (f) Considering the nature of the topic and that WIPO has only recently started to work on the subject that coordination be looked at not just from the perspective of coordination within the Secretariat but also with respect to external coordination with relevant international organizations. Here, coordination, in line with Recommendation 40 of the Development Agenda, with the United Nations Conference on Trade and Development (UNCTAD), the World Trade Organization (WTO) and the Organization for Economic Development and Cooperation (OECD) was considered to be particularly important.

In terms of timing, it was suggested that a Project of this nature needed more time to finalise as evidenced by the fact that some outputs had not been completed by the official end date. It was also suggested that meetings, symposia and other events should be announced well in advance.

2.2 PROJECT EFFECTIVENESS

The evaluation of project effectiveness sought to gauge the level of satisfaction among stakeholders with the quality of the project's work and outputs as well as the effectiveness of the communication about the Project and its activities. The outcome of the evaluation on these aspects was as follows:

(a) All the interview/questionnaire respondents (100%) who answered the relevant questions were either very satisfied or satisfied with the success of the project in integrating IP and competition policy issues into WIPO's training programs. The integration of the topic into training went beyond just WIPO only programs to include training offered in collaboration with other organisations such as the WIPO/WTO Colloquium of IP Teachers.

(b) The majority (75%) of the respondents were very satisfied or satisfied with the symposia and other events organized under the project. 25% of the interview/questionnaire respondents were however unsatisfied by the events. The Global Conference on Emerging Licensing Modalities received particularly good reviews with one respondent, for example, noting that the Conference "was extremely well attended and well received by both stakeholders and Member States. The event gathered significant attention from international media". Some Member States at the Conference itself or in the CDIP expressed similar sentiments. The various Symposia organized under the Project were also considered to be valuable and useful as forums for exchange of information and learning. In terms of reach, the Global Conference attracted almost 400 participants including speakers while the regional meetings and roundtables in Brazil, Kyrgyzstan, Singapore and South Africa reached more than 300 capitals based policy-makers and experts.

(c) With respect to studies and surveys, 75% the interview/questionnaire respondents who answered the relevant question were very satisfied or satisfied with the quality and usefulness of the studies and surveys produced under the Project. However, 25% of the respondents reported being either unsatisfied or very unsatisfied with the studies and surveys under the Project. The low response rate to the surveys (in one case only 20% response rate) was highlighted as a concern and an issue that touched on the quality and usefulness of the surveys. There was also concern that in some cases the studies failed to accurately describe national laws or practice in Member States.

(d) Regarding communications, 57.1% of the interview/questionnaire respondents were very satisfied or satisfied with the way in which communication about the Project and its activities was handled. However, 42.9% of the respondents reported being unsatisfied or very unsatisfied with the communications. One important concern was that communication about the Project, save with respect to the Conference on Licensing Modalities, was mainly confined to communication to the CDIP and not to the broader IP community or the general public. There was also concern raised with the way surveys and questionnaires were communicated which led to long delays in these being received by the relevant entities in Member States. Part of the challenge appears to have related to coordination challenges within Member States or the need to disseminate surveys and questionnaires through Geneva missions.

2.3 EVIDENCE OF RESULTS

It was also of critical importance for the evaluation to identify evidence of tangible results that could be attributable to the work of the Project. Here, we wanted to establish whether the Project on IP and Competition Policy had, as stated in its objectives, enhanced the understanding of the interface between IP and competition among policy makers; whether it had increased the rate of pro-competitive licensing; whether it had provided effective opportunities for exchange of national and regional experiences on IP and competition; and whether it had generated new momentum and interest on IP and competition policy among the Member States and other stakeholders. The findings on these various aspects were as follows:

(a) 50% of the interview/questionnaire respondents reported seeing substantial evidence of enhanced understanding of the interface between IP and competition among policy makers. Another 16.7% of the respondents saw some evidence with the remaining 33.3% saying they saw no evidence of enhanced understanding among policy makers. The evidence cited was in the form of the level of discussion and debate on these issues in the CDIP, at the various symposia, regional meetings, and the round tables as well as at the Global Conference on Emerging Licensing Modalities. The work of Project, which involved bringing together IP and competition authorities, has led, in a number of cases, to the formal signature of Memorandum of Understanding (MoUs) among these institutions. Previously, in many countries, these two different entities did not have even informal contacts. Technical assistance requests were also reported to have increased. For those who did not see evidence of enhanced understanding it was pointed out, for example, that real evidence on enhanced understanding by policy makers could only be in the form improved quality of decisions by competition authorities or courts or the development of new guidelines. Neither of these outcomes could be shown in this case.

(b) A whopping 87.5% of the interview/questionnaire respondents indicated that they could not assess the performance of the Project with respect to the promotion of pro-competitive licensing practices. This appears to have been mainly because it was difficult to establish a correlation between the work of the Project and industry trends and because respondents nevertheless saw no evidence either way. Only a minority (12.5%) reported, without elaboration, seeing some evidence of increased pro-competitive licensing activities attributable to the work of the Project. It was also noted that a result such as an increase in pro-competitive licensing is very difficult to measure and it was unrealistic to include this as an objective of a two-year project.

(c) As to whether the project helped create effective opportunities for exchange of national and regional experiences on IP and competition policy, 85.7% of the respondents who answered the relevant questions reported seeing substantial or some evidence. The remaining 14.3% saw no evidence that the Project managed to create effective opportunities for the exchange of experiences. For many respondents this was probably the most important aspect of the Project. The roundtables, which brought together IP offices and competition authorities to discuss issues of common interest, were considered particularly outstanding as forums for exchange of information and experience. Appreciation of the various events was also recorded during discussions in the CDIP.

(d) Similarly, the majority of the interview/questionnaire respondents (85.7%) who responded to the question on momentum saw substantial or some evidence of the fact that the work under the Project had created new momentum and increased interest in IP and competition policy issues among WIPO stakeholders, including at the national level in Member States. The most substantial evidence cited was the fact that IP and competition issues were mainstreamed into the 2012/2013 WIPO Program and Budget (P&B) indicating the desire of Member States to continue work in this area and in recognition of the foundation that had been laid through the work undertaken by the Project. 14.3% said they saw no evidence of such new momentum or increased interest citing, for example, the low response to the surveys.

2.4 SUSTAINABILITY OF PROJECT RESULTS AND THE NEED FOR FURTHER WORK IN THIS AREA

The criteria used to evaluate whether the results of the Project were sustainable had two main components. In the first instance, the evaluation wanted to determine whether there was evidence of need for continued work on IP and competition policy at WIPO. Secondly, we wanted to determine what stakeholders considered as the likelihood of continued work in this area based on the momentum and interest that had been built during the project period.

Consistent with the finding (above) that the majority of the respondents saw evidence that significant momentum and interest had been created on IP and competition policy among WIPO stakeholders, 62.5% of the interview/questionnaire respondents saw a growing need, going forward, for continuing work on IP and competition policy at WIPO. Another, 25% of the respondents thought that the need for work in this area will remain constant as during the project period. 12.5% of the respondents, however, saw little or no need for further work. Here it is important to clarify the latter group of respondents did not necessarily believe that WIPO should not work on this issue recognizing that the P&B for 2012/2013 has already mandated such work but rather they thought that there was no need for further separate project-based work under the CDIP.

Regarding the likelihood of continued work, 85.7% of the respondents who answered the relevant question thought that it was very likely or likely that work on IP and competition will continue at WIPO in the future based on the effectiveness of the project work and the evidence of positive results. The remaining 14.3% thought it unlikely that project-based work in this area will continue. The optimism regarding the likelihood of continued work in this area can be explained by the fact, cited above, that this area of work has been mainstreamed in the 2012/2013 P&B.

3. CONCLUSIONS AND LESSONS-LEARNT

The findings reported in Part 2 of this Report have led us to a number of conclusions regarding the results of the Development Agenda Project on IP and Competition Policy. The conclusions are grouped into two sets. One set relates to the design and management of the Project and the other set to the overall results in terms of meeting the Project objectives. It should be remembered, as noted earlier, that a few components of the Project have not been completed and as such it may be a little early to have a final definitive assessment of the overall results of the Project as

measured against its objectives set out in document CDIP/4/4 REV. The results or impact of some of the Project's work, such as the studies, may also not become apparent for sometime.

3.1 CONCLUSIONS AND LESSONS ON THE PROJECT DESIGN AND MANAGEMENT

Project design

The Project document as a guide for implementation was scored very highly (87.5%) while it scored 80% among the respondents with respect to it providing a sufficient framework for monitoring, self-evaluation and reporting. In this regard, it is fair to conclude that the joint effort of Member States and the Secretariat in designing the Project paid off resulting in a well-designed initiative. The Project document was therefore sufficient to provide guidance to the Secretariat in the project implementation work and to provide a reasonable framework for discussions on progress in the CDIP as well as for evaluation.

There are also a couple of lessons that could be drawn from the findings in Part 2 of the Report. First, the fact that some components of the Project are not yet finalized means that the implementation period needed to be longer (probably three (3) years). Second, one objectives of the Project (promoting pro-competitive licensing practices) may have been too ambitious and, most importantly, was not easily measurable. This is along-term objective, if at all, that cannot be achieved with a two-year project.

Project management

The findings in this Report show that at least 80% of interview/ questionnaire respondents considered the coordination and the projects ability to respond to new trends and external forces to be well managed. Over 65% considered that there were adequate risk management and mitigation strategies. This leads to the conclusion that the Project was quite well managed both in terms of activity planning and execution, reporting to the CDIP and resource utilization as well as coordination within the Secretariat. The only major critique in this area relates to limited external coordination that would have ensured closer partnerships with other relevant international organizations including UNCTAD, WTO and the OECD. The lesson here is that more could be done to find ways to involve these entities in WIPO's work.

3.2 CONCLUSIONS AND LESSONS ON THE PROJECT RESULTS

The following conclusions were reached with respect to the project results as measured against the project objectives. The details of the scoring against the performance indicators are contained in Appendix I to this Report.

Enhanced understanding by policy-makers of the interface between IP and competition

Overall, it can be concluded that the Project has over the two-year period been instrumental in enhancing the understanding of policy-makers on the interface between IP and competition, including resulting into concrete outcomes such as the

signing of MoUs between IP offices and competition authorities in a number of countries. There is a discernible rise in the level of debate on IP and competition in the CDIP and in WIPO generally and the project allowed several hundreds of policy makers and experts to explore the relationship between IP and competition. The Project events were also rated as quite successful. Most stakeholders who participated saw them as both informative and useful. At the very least therefore, the Project succeeded in raising awareness among policy makers and experts on the interface between IP and competition and, in a number of cases, catalyzing concrete actions.

Increased pro-competitive licensing practices

There was no data to measure the Project's work against this objective. As explained, this was partly because of the difficulty in establishing a correlation between the Project's work and industry trends and partly because this is a medium to longer-term goal that is unlikely to be achieved in two-years. The basic conclusion from the findings is therefore that it could not be established whether the Project had had any impact on the industry licensing practices.

Effective opportunities for exchanging regional and national experiences

The Project no doubt succeeded in providing effective opportunities for exchange of national and regional experiences as well as sharing of insights on the subject. The Global Conference on Emerging Licensing Modalities, the symposia, the roundtables and regional meetings reached hundreds of key policy-makers, experts, negotiators and other stakeholders. In an area that is particularly new and under explored in developing countries and LDCs this was a major achievement for the Project.

Momentum and increased interest on IP and competition policy issues

The Project work and the discussions on the topic in the CDIP appear to have generated momentum and increased interest on the subject among WIPO Member States. It can also be concluded that the work under the Project was instrumental and informed the decision of the WIPO General Assembly to establish a work program on IP and competition under the 2012/2013 P&B backed by a new IP and Competition Division in the Secretariat. It however remains an open question whether, going forward, it is best that further work be undertaken in the context of the P&B work program or whether there is any need for another specific Development Agenda Project.

4. RECOMMENDATIONS

The purpose of this independent external evaluation was to provide an opportunity for learning about what worked well and what didn't work during the project implementation in order to inform the design and execution of any future activities in this area. A further aim was to provide evidence-based evaluative information to facilitate decision-making especially in the CDIP. Considering these two evaluation objectives, it is considered that it is not the place of the evaluator to make any recommendations regarding the direction or scope of future work or to suggest the decisions that the CDIP should make. Rather, it is best to leave it to the Committee and the relevant stakeholders to make such decisions based on the findings and conclusions in Part 2 and 3 of the Report respectively.

That said, because this evaluation is one of the first evaluations of the Development Agenda thematic projects, the evaluator considers it appropriate to make some recommendations regarding the evaluation framework and process for such future project evaluations based on the experience gained in the current evaluation process. The recommendations focus on the evaluation framework, scope and timing.

Recommendation on evaluation framework and timing of evaluations

The right decision was made to include, from the outset, an evaluation framework as part of the design of the Project. It is recommended that this practice be continued if any further projects in this area are developed or as a general rule for Development Agenda projects. It is also recommended that the idea of self-evaluation with the option of an external independent evaluation be maintained. However, to avoid the self-evaluation exercises being more or less the equivalent of progress reports on the Project, I would recommend that for projects of two years or less that there only be one end of project self-evaluation. Once the Committee has reviewed the self-evaluation a decision can then be made on whether an independent external evaluation is needed.

This approach is not only more realistic but will save resources and produce better results. Most importantly, such an approach will ensure that any external independent evaluation is undertaken some time after all the project outputs have been completed and some data is collected on issues such as usage of studies or concrete capital level actions that have been taken. It will also give the Secretariat enough time to prepare an end of project report and to internally reflect on the results of the self-evaluation. This will avoid a situation, such as in the current case, where respondents are unable to fully assess results and even the quality of outputs because the evaluation is undertaken before all project activities are fully completed.

[Appendix I follows]

APPENDIX I: EVALUATION RESULTS BASED ON THE EVALUATION MATRIX

<u>Project Objective</u>	<u>Performance/Outcome Indicator</u>	<u>Evaluation Results</u>
Enhanced understanding by policy-makers on the interface between IP and Competition	Level of debate in CDIP on IP and competition issues.	There has been a marked rise in the level of debate and discussion on the issue in the CDIP and other committees.
	Number of policy-makers participating in project events.	A significant number of policy-makers participated in the different events. For example, the Global Conference on Emerging Licensing Modalities attracted 350 participants plus 40 high level speakers. A significant number of capital based policy-makers and officials also participated in the regional meetings and roundtables. In total more than 300 policy-makers and experts participated in the regional meetings and roundtables held Brazil, Kyrgyzstan, Singapore and South Africa.
	% of rate satisfaction with training and the symposia, national/regional meeting and global meeting (usefulness, new knowledge)	75% satisfaction rate.
Increase in pro-competitive IP licensing practices	Number of countries that have adopted appropriate legal provisions in national/regional laws.	No data available.
	Number of guidelines or recommendations developed at the national/regional level.	No data available.
Effective opportunities for exchange of national and regional experiences on IP and competition	Number of participants in symposia and national/regional meetings.	A significant number of policy-makers participated in the different events. For example, the Global Conference on Emerging Licensing Modalities attracted 350 participants plus 40 high level speakers.

<u>Project Objective</u>	<u>Performance/Outcome Indicator</u>	<u>Evaluation Results</u>
		A significant number of capital based policy-makers and officials also participated in the regional meetings and Roundtables. In total more than 300 policy-makers and experts participated in the regional meetings and roundtables held Brazil, Kyrgyzstan, Singapore and South Africa.
	Level of response to surveys.	In general, the level of response to the survey was low in part due to the complexity of the subject and lack of coordination at the national level between the responsible entities.
Momentum and increased interest for continued work on IP and competition issues at WIPO and in Member States	Increase in demand for IP and competition policy assistance or information.	There has been a marked increase in requests.
	Number of countries addressing issues on the interface between IP and Competition.	Data not available.
	Respondents reporting that there is growing need for work in this area	71.4%
	Rate of use of project studies (downloads from WIPO website, requests for copies).	Data not available

[Appendix II follows]

APPENDIX II: EVALUATION MATRIX

<u>Key Issue</u>	<u>Performance/Outcome Indicator</u>	<u>Data Collection Tools</u>	<u>Key Informants</u>
Enhanced understanding by policy-makers on the interface between IP and Competition	<ul style="list-style-type: none"> • Level of debate in CDIP on IP and competition issues. • Number of policy-makers participating in project events. • % of rate satisfaction with training and the symposia, national/regional meeting and global meeting (usefulness, new knowledge) 	Document analysis/review; interviews with participants in events (symposia, national/regional meetings and global meeting) and the project team; and e-mail administered questionnaire.	<ul style="list-style-type: none"> • Member States (IP offices, competition authorities, Geneva –based negotiators). • WIPO project team. • Observers (civil society, industry and intergovernmental organizations - IGOs).
Increase in pro-competitive IP licensing practices	<ul style="list-style-type: none"> • Number of countries that have adopted appropriate legal provisions in national/regional laws. • Number of guidelines or recommendations developed at the national/regional level. 	Document analysis/review; interviews/ e-mail administered questionnaire with project team; and Member states.	<ul style="list-style-type: none"> • Member States (IP offices, competition authorities). • WIPO project team.

<u>Key Issue</u>	<u>Performance/Outcome Indicator</u>	<u>Data Collection Tools</u>	<u>Key Informants</u>
Effective opportunities for exchange of national and regional experiences on IP and competition	<ul style="list-style-type: none"> • Number of participants in symposia and national/regional meetings. • Level of response to surveys. 	Document analysis/review; interviews with participants in events (symposia, national/regional meetings and global meeting); and interviews/e-mail administered questionnaire with project team.	<ul style="list-style-type: none"> • Member States (IP offices, competition authorities, Geneva –based negotiators). • WIPO project team. • Observers (civil society, industry and IGOs).
Momentum and increased interest for continued work on IP and competition issues at WIPO and in Member States	<ul style="list-style-type: none"> • Increase in demand for IP and competition policy assistance or information. • Number of countries addressing issues on the interface between IP and Competition. • Respondents reporting that there is growing need for work in this area. • Rate of use of project studies (downloads from WIPO website, requests for copies). 	Document analysis/review; Interviews with project team and with a cross-section of WIPO stakeholders (Members States, including IP offices, competition authorities, and observers.	<ul style="list-style-type: none"> • Member States (IP offices, competition authorities, Geneva –based negotiators). • WIPO project team. • Observers (civil society, industry and IGOs).

[Appendix III follows]

APPENDIX III: LIST OF KEY DOCUMENTS REVIEWED

1. Project Document titled “Project on Intellectual Property and Competition Policy”; document CDIP/4/4 Rev dated 1 December 2009.
2. Progress Reports on Development Agenda Projects, document CDIP/6/2 dated 1 October 2010.
3. Progress Reports on Development Agenda Projects, document CDIP/8/2 dated 4 October 2011.
4. Study on the “Interaction of Agencies Dealing with Intellectual Property and Competition Law” document CDIP/4/4 REV. STUDY/INF/1 dated 16 June 2011.
5. Study on the “Interface Between Exhaustion of Intellectual Property Rights and Competition Law” document CDIP/4/4 REV. STUDY/INF/2 dated 1 June 2011.
6. Study on the “Analysis of the Economic/Legal Literature on Effects of IP Rights as Barriers to Entry” document CDIP/4/4 REV. STUDY/INF/3.
7. Survey on “Measures to Address the Interface between Antitrust and Franchising Agreements” document CDIP/4/4 REV. STUDY/INF/4 dated 23 June 2011.
8. Survey on “Compulsory Licenses Granted by WIPO Member States to Address Anti-Competitive Uses of Intellectual Property Rights” document CDIP/4/4 REV. STUDY/INF/5.
9. Study on the Anti-Competitive Enforcement of Intellectual Property Rights: Sham Litigation (Available at http://wipo.int/export/sites/www/meetings/en/2011/wipo_ip_ge_11/docs/study.pdf.)
10. Meeting/Mission Report of the First International Meeting on IP and Competition Policy held in Brazil in June 2010.
11. Meeting/Mission Report of the Second International Meeting on IP and Competition Policy held in South Africa in April 2011.
12. Meeting/Mission Report of the Third International Meeting on IP and Competition Policy held in Kyrgyzstan in November 2011.
13. Meeting Report for Global Meeting on Emerging Copyright Licensing Modalities held in November 2010.
14. Meeting Report on the first symposium on IP and Competition held in Geneva in May 2010.
15. Meeting Report on the second symposium on IP and Competition held in Geneva in October 2010.
16. Meeting Report on the third symposium on IP and Competition held in Geneva in June 2011.
17. Meeting Report on the fourth symposium on IP and Competition held in Geneva in October 2011.

18. Meeting/Mission Report on Roundtable on IP and Competition Policy in Rio de Janeiro.
19. Meeting/Mission Report on Roundtable on IP and Competition Policy in Singapore in September 2011.
20. Proceedings/Minutes of the 6th, 7th and 8th Sessions of the CDIP.

[Appendix IV follows]

APPENDIX IV: INTERVIEW GUIDE/QUESTIONNAIRE

Project Evaluation:

Development Agenda Project on Intellectual Property and Competition Policy

INTERVIEW GUIDE/QUESTIONNAIRE

1. BACKGROUND

In December 2009 the World Intellectual Property Organization (WIPO) Committee on Development and Intellectual Property (CDIP) approved the Project on Intellectual Property and Competition Policy to implement Recommendations 7, 23 and 32 of the WIPO Development Agenda. The project was to be implemented over a period of two years (January 2010 to December 2011). The project's main objective was to enable policy-makers, particularly from developing countries and least-developed countries (LDCs) to better understand the interface between intellectual property (IP) rights and competition policies; promote pro-competitive IP licensing practices; and provide an opportunity for the exchange of national and regional experiences and information on the link between IP rights and competition policies.

The project was implemented through a range of activities including meetings and events, studies and surveys of laws and practices. Evaluation was an integral part of the project design. This was to be done at two levels, self-evaluation and independent evaluation. During the project period, two self-evaluation exercises were carried out and reported to the CDIP. Following the end of the project, the WIPO Secretariat has now commissioned an external independent evaluation of the Project. The Evaluation is being carried out by one independent evaluator (Sisule F. Musungu).

There are two main objectives for the evaluation. These are to:

- a) Assess and report on the performance and results of the project by learning from experiences during the project implementation period, including understanding what worked well and what did not work well; and
- b) Provide evidence-based evaluative information to support the decision-making process in the CDIP, including determining the reasons for success or failures.

In terms of scope, the evaluation is intended to assess the extent to which the project has been instrumental in:

- Increasing the understanding of the interface between IP and Competition policy among policy-makers;
- Promoting pro-competitive IP licensing practices; and
- Providing opportunities for exchange of national and regional experiences.

The exercise is to be a participative evaluation providing for active involvement of various stakeholders (partners, beneficiaries and other interested parties) in the process. Consequently, interviews and administering questionnaires among the stakeholders is a key part of the methodology chosen for the evaluation.

This interview guide/questionnaire has been developed to solicit input from stakeholders. However, your individual input will remain confidential to the independent evaluation team. The overall results of the evaluation will be presented to the CDIP.

2. EVALUATION INPUT

We request you to provide as much information as possible for each question. We appreciate, however, that you may not have participated or may not be aware of all the project activities and outputs. If you cannot assess a particular activity or respond to any question feel free to indicate so or leave it blank.

2.1 Details of Respondent

Name:

Title:

Contact details:

2.2 Involvement in the Project

How were you involved in the project? You can check more than one category if applicable.

- Representative of a Member State in the CDIP/WIPO.
- Project team member
- Representative of a beneficiary agency (IP office/Competition authority)
- Representative of an observer organization at CDIP/WIPO
- Study author
- Respondent in project survey
- Participant in regional or sub-regional meeting (in Brazil, South Africa or Kyrgyzstan)
- Participant in the Global Meeting on Emerging Copyright Licensing Modalities (Geneva)
- WIPO website/publications user
- Other (please specify) _____

2.3 Project design and management

How would you rate the design and overall implementation of the project on IP and Competition Policy?

Project design/management aspect	Excellent	Good	Fair	Poor	Cannot assess
Initial project document as a guide for project implementation and assessment of results					
Project monitoring, self-evaluation and reporting tools as a basis for providing information for decision-making					

Coordination of project implementation within the Secretariat ensuring effective and efficient project execution					
Risk management and mitigation strategies					
Project's ability to respond to emerging trends and other external forces					

Comments (briefly explain your rating above):

2.4 Project effectiveness

How satisfied are you with the quality of the project's work and outputs and its effectiveness as measured against the original project objectives and the requirements of Recommendations 7, 23 and 32 of the Development Agenda?

Aspects of effectiveness	Very satisfied	Satisfied	Unsatisfied	Very unsatisfied	Cannot assess
Integration of IP and Competition Policy issues into WIPO training Programs					
Symposia, meetings and events organized under the Project					
Studies and surveys					
Communication about the project, its activities and results					

Comments (briefly explain your rating above):

2.5 Evidence of results:

Have you seen evidence of tangible results that could be significantly attributed to the work undertaken under the Development Agenda Project on IP and Competition Policy?

Possible types of results	Substantial evidence	Some evidence	Little evidence	No evidence	Cannot assess
Enhanced understanding of the interface between IP and competition among policy-makers					

Possible types of results	Substantial evidence	Some evidence	Little evidence	No evidence	Cannot assess
Increased pro-competitive IP licensing practices					
Effective opportunities for exchange of national and regional experiences on IP and competition					
Momentum and increased interest on IP and competition policy at WIPO and in Member States					

Comments (briefly explain your rating above. As far as possible please specify the specific evidence you have seen and why it is attributable to the project):

2.6 Sustainability of project results

Based on your assessment of the effectiveness of the project and the evidence of results do you consider the project results sustainable?

Sustainability criteria	Growing need/Very likely	Constant need as during the project/Likely	Little or no need/Unlikely	Cannot assess
Continued need for work on IP and competition among stakeholders				
Likelihood of continued work on IP and competition by WIPO and in Member States				

Comments (briefly explain your response above):

2.7 Suggestions for the future

Overall, the project's self-evaluation indicated positive results from the project. If further work were to be undertaken on IP and competition policy at WIPO what improvements would you suggest for future projects/initiatives?

Project aspect	Suggested improvements
Project design and management	
Project results and evaluation	

Project aspect	Suggested improvements
Project outputs and activities	
Activity timings	
Beneficiaries/ participants	

2.8 Additional feedback on the project

Do you have any other feedback on the project that is not captured in the answers to the questions in sections 2.3 to 2.7? If yes, please provide this feedback here.

Thank you for your support and input.

[End of Appendix IV and of document]