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INTRODUCTION

1.0.1 Most developing countries referred to as *economies in transition* are generally characterized as having highly concentrated industries, large state-owned sectors, and inefficient firms operating in markets insulated by trade barriers. While many of these countries have adopted policies of trade liberalization, de-regulation and privatization, a question arises as to whether market forces can be further strengthened by enacting a competition (anti-trust) law. And whether such strengthening of market forces will result in higher economic growth. There are divergent views on these issues. Some argue that promotion of competition may not always be conducive to industrial growth and international competitiveness. Others suggest that liberalization of international trade is sufficient to promote competition. While some others argue that even if competition law is considered desirable in the abstract, the probability of improper enforcement, misuse of bureaucratic power, or regulatory capture is so high in developing and transition market economies that the expected costs of such legislation outweigh the possible benefits.

1.0.2 All 7-Up project countries have initiated economic reform in recent years, introducing a wide variety of liberalization initiatives (see discussion below). Besides, the decontrol, deregulation and privatization initiatives are being taken at a time when global economic environment is also undergoing a major change. The GATT-94 accord and the consequent setting up of the World Trade Organization (WTO) have changed the rules of the game vis-à-vis world trade. While the finer implications of this accord for the domestic policymaking are slowly being recognized, efforts are on to explicitly make competition policy an agenda item for WTO negotiations.

1.0.3 The key issue for the 7-Up project countries in the current phase of transition is of managing the competition that the economic reform and liberalization processes have set in motion. What kind of competition policy needs would emerge during this transition process? Are these needs important enough to be addressed by specific policy initiatives? If yes, how? The project seeks to find answers for this complex set of questions. While there is limited consensus on the competition policy needs for developing countries, three inter-related issues are being increasingly recognized:

- Competition policy needs may differ according to levels of economic development of a nation.
- Competition law is just one of the various public policies that impinge on the competitive environment of an economy. Consequently, the linkages between various policy initiatives and their combined effect on competition, efficiency and growth need to be understood before identifying the key parameters of competition policy and the scope of competition law.
- The institutional framework is critical for the efficacy of competition law.

1.0.4 The project countries differ in terms of levels of development and several structural features. These include size and sectoral diversification of the economy (e.g., importance of the service and manufacturing sectors), status of the financial markets, levels of concentration across industries, role of multinational corporations (MNCs) and state owned enterprises (SOEs) and the degree of openness (import/export penetration). These countries also differ in terms of past and current policy regimes. While all of them have liberalised their policies in recent years, the extent of such liberalisation (e.g., deregulation, privatization, trade liberalisation, openness to foreign direct

investment, FDI etc.) differs across nations. Besides, not all of them have gone through the structural adjustment programmes.

1.0.5 Given the differences across countries and the three general issues raised above, this paper pools together the analysis/information contained in the seven country reports and papers to gain insights into the links between economic development and competition policy. In order to do that it focuses on three questions:

- How the structural and policy differences affect competition policy requirements?
- Given these requirements, what are the emerging substantive and administrative needs of competition law?
- To what extent the existing competition laws fulfill these needs?

1.0.6 The rest of the paper is divided into six sections. The next section summarises the socio-economic profile of the 7-Up countries to provide a developmental context to the subsequent discussions. The public policies adopted in the project countries are discussed in Section 3. Given the development needs and public policies, Section 4 attempts a broad-brush evaluation of competition policy related requirements in the project countries. Some inadequacies relating to the scope of competition law are summarized in Section 5. Issues relating to capabilities of the competition authority and the associated administrative framework are discussed in Section 6. The final section makes some brief concluding observations.

SOCIOECONOMIC PROFILE AND THE DEVELOPMENTAL CONTEXT

2.0.1 Table 1 summarizes some key socioeconomic features of the 7-Up project countries. It is evident that they differ significantly in terms of population size, size of the economy, per capita incomes, human development, industrial structure and exposure to the world economy. Are the competition policy requirements the same across these countries? If yes, why? If no, on what parameters they should differ? Some key socioeconomic aspects of the countries are summarised here to highlight the importance of the development context of competition policy.

2.1 Some Structural Features

2.1.1 Apart from the differences in size (in terms of population and income), which varies significantly across countries a few interesting differences need to be highlighted:

- In all nations, except South Africa and to some extent Zambia, agriculture is an important sector. However, even among the remaining five countries, its contribution to GDP varies a great deal; it is as high as 48 per cent in Tanzania and as low as 21 per cent in Sri Lanka.
- The tertiary sector is the most important contributor to GDP in all project countries and has improved its share during the 1990s. This sector has gained at the cost of agriculture and manufacturing. For example, the tourism sector is very important in Kenya and Tanzania.
- During the 1990s, the relative decline in the manufacturing sector has been most striking in Zambia where it fell from 32 to 11 per cent.[1] The manufacturing sector was most thin in Tanzania.[2] Moreover, only India and South Africa, the two relatively large economies, can claim to have a diversified manufacturing sector.
- Information on the levels of concentration (in distribution of assets and market shares in different industry groups) is sketchy but it seems to be high in most countries.
- Import penetration is in excess of 20 per cent of GDP in all countries, except in India, but is particularly high in Sri Lanka, Zambia and Kenya.

2.2 Role of FDI and Cross-border Mergers

2.2.1 Apart from exports and imports, another important aspect of an economy's 'openness' is the role of cross-border mergers & acquisition (M&A) activity and foreign direct investment. Table 2 reports some estimates in this regard. A few patterns are striking:

- All countries have seen cross-border M&A activity in recent years. While in terms of absolute values of these transactions, South Africa, India and Pakistan are way ahead of

[1] The country paper on Zambia suggests that the structural adjustment programme (SAP) and import competition have contributed to the decline of the manufacturing sector and making the country a 'trading nation'. The rates of growth of agriculture and industry during the 1990s were negative.

[2] Import competition is high here also and has damaged the textile sector. Only beer and tobacco are able to face import competition despite high utility and capital costs.

the others. However, as a proportion of GDP, these transactions seem to be quite important in Zambia and South Africa and not so much in India (compare Tables 1 and 2).

- Cross-border M&A activity by local firms is somewhat significant only in South Africa and to some extent India.
- As in the case of M&A activity, while quantum of inward FDI flows & stock is significant only for India and South Africa, its share in investment and GDP is high in Zambia, Pakistan, Sri Lanka and South Africa; the share in India is actually the least.

2.3 Importance of the Public Sector

2.3.1 Another important aspect relates to the role of the public sector in the countries under study. While the papers do not provide adequate details, it is clear that in all countries, except South Africa the role of public sector in different segments of the economy has been significant. While privatization is taking place in all countries, SOEs remain important in many sectors especially those relating to infrastructure.

2.4 Some Implications for Development Requirements

2.4.1 From the point of view of development needs and competition policy, a few things need to be emphasized. One, while its contribution to GDP may not be very high, agriculture along with small scale manufacturing is likely to be the most important source of livelihood and employment in all countries, except perhaps South Africa. Two, although a very diversified manufacturing sector may not be feasible or necessary for very small countries, it is seen by many as an important pre-requisite for development in economies of reasonable size. Three, high levels of concentration may be a natural consequence of small economy size in the absence of a significant export orientation. Four, services are generally not tradable and therefore import competition is not able to make these markets contestable. Five, in a situation, where public sector monopolies are being privatised, the government needs to ensure that these are not replaced by private sector monopolies. Finally, cross-border M&A along with FDI related activity is expected to be an important competition policy concern in almost all countries, but its relevance will be higher in those countries where the volume of transactions is high or when they constitute a significant share of investment and GDP. We shall return to these issues later.

PUBLIC POLICY CONTEXT

3.0.1 The purpose of this section is to discuss various public policies that the project countries have adopted in recent years and in the past. Since competition policy needs to be seen in a wider policy context, such a discussion will put the role of competition policy in a wider perspective. Since most countries have introduced various liberalization policies, the discussion of these will be the focus of this section. Figure 1 provides an overview of the linkages between competition law and various public policies.

3.0.2 One of the most striking features of the past 10-15 years has been the increasing reliance on market mechanisms to promote economic progress. This is evident in the widespread trend toward privatization, deregulation, adoption and enforcement of competition law, reduction in the scope of industrial policy etc. The 7-Up nations have not been exceptions to this trend. Table 3 summarizes the key policy changes and the current policy focus in these countries.

3.0.3 While the details available in the country papers are inadequate in many respects, it is remarkable that in virtually all the project countries, the decades of 1960s and 1970s saw significant government involvement in the promotion of national economies. A variety of instruments (price control, planning, participation in the economy via state-owned enterprises (SOEs), public procurement, control of foreign direct investment, regulation of entry, public subsidies, industrial policy etc.) were used for this purpose. These instruments also shaped industry structures and/or protected national firms from the rigours of domestic and international competition. Although explicitly stated in only a few papers (India, Kenya, Zambia?), large fiscal deficits, the high costs and poor economic performance associated with most government interventions and a variety of other "government failures" have resulted in pressures to downsize the public sector in most of these economies.

3.1 Labour Policy

3.1.1 While the project countries depict several similarities in policy shifts in recent years, the degree to which these countries have adopted liberal policies seems to be quite different. Given the links among different policies, this will obviously mean that these countries may have different competition policy requirements. For example, in Kenya, where a very liberal labour policy seem to have made exit much easier, making markets more contestable, the requirements of competition policy may be quite different from those of India where labour policies still make exit

very difficult. Surprisingly, none of the papers explicitly focus on exit conditions. The general impression one gets from the papers though is that rigidities in the formal labour market are widespread. Use of informal labour reduces the exit-related problems. And the informal sector seems to be quite significant in all project countries.[3]

3.2 Trade Policy

3.2.1 Trade liberalisation seems to be a policy that has been followed by all 7-Up project countries in a very consistent manner. We have already mentioned the mortality related to import liberalisation in Zambia. Table 3 shows that all project countries have undertaken significant trade liberalization in recent years. The changes have typically included conversion of non-tariff barriers into tariffs and reduction & rationalization of tariff rates. In many countries (e.g., India, Tanzania, Sri Lanka and South Africa), the reduction in peak and base tariff rates has been significant. Consequently, in the tradable sector, contestability would have increased in all these countries. In fact, in some of these countries, India, Pakistan and Zambia, anti-dumping measures have been used extensively in recent years, suggesting an increase in import competition. In the case of Pakistan, anti-dumping law was actually enacted in the 1990s as the fear of dumping increased with a decline in tariffs and removal of non-tariff barriers. While contestability has gone up, it needs to be re-emphasized that the exposure to world markets through exports and imports differ considerably across the project nations.

3.3 Financial Sector Reforms

3.3.1 While trade liberalisation has made significant progress, financial sector reforms have not made adequate progress in most of the project countries. As a result, deepening of the financial sector has not taken place. The financial sector reforms are extremely important as the access and cost of capital is one of the most important entry barriers, especially in developing economies. Once these barriers decline, contestability in these economies will increase in a very significant manner.

[3] Only the paper on Kenya explicitly refers to the role of the informal sector. However, this sector is important in all project countries.

3.3.2 The equity markets have not matured in any of the project countries except perhaps South Africa and India. Countries like Zambia have only eight listed companies and the Dar E Salaam stock exchange was set up only in 1998. In India, while the stock exchange has existed for many years, the controls on capital issues have been lifted only recently and it will take a while before it matures into a well functioning market. It is difficult to assess from the available information, the relative ease of raising capital from the equity markets in the project countries. However, it is doubtful if such opportunities are significant in countries other than India and Sri Lanka.

3.3.3 The policies linked to financial sector reforms include foreign exchange restrictions, controls on capital and current accounts of the balance of payments (the convertibility issue) and controls on exchange and interest rates. Zambia introduced full convertibility and removed restrictions on exchange/interest rates in 1992. However, interest rate spread increased considerably after liberalisation and the credit availability from the domestic banking sector (as a proportion of GDP) declined.[4]

3.3.4 Similarly, the introduction of banking sector reforms in Tanzania has removed the monopoly of state owned financial institutions and many private banks have entered the market. Despite this the interest rate spread continued to be high and domestic producers (especially small ones), had limited access to finance. At the same time, participation of foreign investors in the domestic stock exchange remains limited in Tanzania despite liberalisation of policies relating to securities market. This is partly due to the fact that the capital and current accounts have not been fully liberalised.

3.3.5 Financial sector liberalisation in Sri Lanka has resulted in the opening up of the current account but restrictions on the capital account remain. Apparently, a tight monetary policy combined with an inefficient banking sector has kept the interest rates high and credit availability low for the domestic producers, especially those who are small and/or located in rural areas.

3.3.6 Entry barriers related to availability and cost of capital remain important even in Pakistan where full convertibility of the capital and current accounts facilitates repatriation of capital, profits

[4] The interest rate spread increased from 9.5 to 20.5 per cent during 1990-99 and domestic credit/GDP ratio declined from 42 to 33 per cent during the same period.

and dividends. Besides, there are no restrictions on FDI flows in the banking sector. The lending by public sector financial institutions, however, is politically influenced.

3.3.7 In Kenya, most transactions in the current and capital accounts have been fully liberalised and the interest rates have been more or less freed.[5] Apparently, the formal large-scale sector does not face major problems vis-à-vis accessing credit; they even procure it at rates lower than the benchmark Treasury bill rate. However, the problem of access remains severe for SMEs.

3.3.8 The details of financial sector reforms in South Africa are not available. However, significant liberalisation seems to have taken place. South African firms, insurance companies, unit trusts etc. can invest in foreign portfolio holdings. Foreign companies have also invested heavily in the equity and bond markets in South Africa. Historically, major financial institutions have been linked to large conglomerates in the country through cross-holdings. While these links are gradually breaking down, credit availability remains a problem for SMEs.

3.3.9 Finally, many reforms relating to the banking sector and the stock market have been introduced in India during the 1990s. Despite these liberalisation measures (capital account is not yet not fully convertible) in the financial sector, cost of capital and its availability remains a concern for the domestic firms in India. The domestic firms have also been highlighting the fact that they pay much higher rates of interest than their MNC competitors. Although accessing international markets is now possible, few domestic firms can utilize that opportunity. Besides, their ability to raise capital in the international markets will remain inadequate vis-à-vis the MNCs. Consequently, in any entry or restructuring related (especially M&A) activity in the liberalising markets, MNCs will have the odds in their favour.

3.3.10 Overall, the degree of financial sector liberalisation and its maturity determine the availability and cost of capital for the market players. Moreover, macro-economic policies that lead

[5] While this statement is still valid, in August, 2001, interest rates were pegged to a maximum of 4% above 3 month T-bill rate for Banks' lending, and minimum of 75% of same T-bill rate for deposits in the Banks. It is not being implemented since the Kenya Bankers Association has sought a declaration that the Central Bank of Kenya, CBK (Amendment) Act 2000, Act No 4 of 2001 published as Gazette Supplement No 62 on August 7, 2001 is null and void on various constitutional and legal grounds. They have sought a stay of the operation of the law pending hearing and determination of the constitutional reference. (communication from David Ongolo).

to financial repression (e.g., in highly monetarist regimes) may result in high cost of capital even in those countries where financial markets are less imperfect. Broadly then, imperfections in the capital market create differential entry barriers for different types of local entrants (small v/s large, established v/s new) and between domestic and foreign players.

3.4 Policies relating to FDI and Privatization

3.4.1 All 7-Up countries have adopted more liberal policies relating to FDI and privatization. If the economic structure thrown up by the liberalisation of these policies is different across countries, the competition policy challenges may also differ. For example, South Africa, where privatization initiatives have been most pervasive and where FDI flows are large, may face different competition policy challenges than most other project countries where privatization efforts have made slow progress and the role of foreign capital is not that high. This sub section seeks to highlight some of these differences across countries. These together with cost of capital concerns will bring into sharper focus the role of competition policy in dealing with firms facing different entry/market conditions that are either induced by policies or are a result of capital market imperfections.

3.4.2 Zambia's FDI related policies initiated in 1992 did not impose any export requirements or import restrictions on FDI. In fact, the government provided incentives to MNCs through tax holidays and special conditions for import of inputs (raw materials as well as intermediate goods). This created anti-competitive conditions for the domestic firms that did not benefit from such arrangements. While the tax holidays have now been abolished, the special import conditions for MNCs continue. Moreover, since the privatization process initiated in Zambia did not distinguish between foreign and domestic firms, many erstwhile parastatals are now foreign private sector monopolies or dominant firms. There is a need to apply competition rules in a non-discriminatory manner, giving due recognition to the policy-induced advantages available to foreign entities.

3.4.3 In recent years, garments and service sectors have attracted most of the FDI in Sri Lanka. Some MNCs like Caltex, Shell, NTT Japan, Prima etc. were given special monopoly status for a limited time period to attract them into the country. The term of these arrangements has either come to an end or is going to in the near future. A proper regulatory framework has to be in place to ensure that the MNCs do not abuse their market dominance. Similarly, the privatization programme in Sri Lanka was not introduced to promote a more competitive economy but to earn

revenue and to reduce the fiscal burden of subsidizing the inefficient public enterprises.[6] Consequently, the emergence of the Fair Trading Commission (FTC) was not linked to the privatization programme. It was only in the early 1990s that abuse of market dominance by some of the privatized enterprises came to light and the role of FTC in curbing such acts became obvious (Kelegama, 2001).

3.4.4 While FDI flows have declined in recent years, MNCs constitute and important segment of the Kenyan economy. A few MNCs control banking and it is estimated that the top four banks control 65 per cent of the annual credit and assets for the sector. Similarly, 8 firms also control imports of petroleum. Of these 4 are MNCs that control almost 80 per cent of the market. Privatization in Kenya has essentially focused on the parastatals in the agricultural sector. But the privatization process has only moved in fits and starts.

3.4.5 FDI in Tanzania is concentrated in mining and tourism. Privatization in the country has reduced the number of monopolies, especially in transportation, media, communication, agriculture and petroleum trade. In some sectors, however, private sector monopolies and oligopolies have emerged.

3.4.6 FDI flows into Pakistan have declined in recent years, partly due to the economic sanctions imposed by the United States and some other countries. Moreover, since competition law puts a ceiling on the size of privately owned firms, it may have created a disincentive for MNCs. Although this section has been suspended and no action has been initiated under this section in recent years, its presence in the Act, may *ceteris paribus*, dissuade FDI. About 109 enterprises have been privatized in Pakistan so far. The process of privatization has not been transparent and the government has not ensured a more competitive situation; state owned monopolies have been replaced by private ones.

[6] By the year 2000, about 42 privatization initiatives have been completed. During late 1980s and early 1990s, the focus of privatization was industries like cement, tyres, textiles, hotels etc. The current focus is on infrastructure privatization. So far Telecom, Shell Gas, Air Lanka and certain terminals within the Colombo port have been privatized. (Based on communication from country researchers)

3.5 Sector Specific Regulation

3.5.1 The trend of economic deregulation in all these countries has been complemented in recent years by sector specific measures designed to eliminate public monopolies or to open up for competition strategic sectors such as telecommunications, electricity distribution etc. This is so despite the considerable importance for the future technological and economic development of nations for many of these sectors. There is some cross-country empirical evidence to suggest that in many sectors the introduction of competition has led to significant decreases in costs and prices, an increase in the diversity of services offered to consumers and rapid economic growth. All 7-Up countries have created sector specific authorities. The linkages between competition agency and sector specific regulatory authorities are extremely relevant. We shall revert to this issue later.

3.6 Other Policies

3.6.1 A few other policies need to be mentioned. We do not have data but the importance of public sector differs across countries. As mentioned, all project countries have initiated privatization programmes, many sectors may remain dominated by the SOEs. Apart from public sector, small firms face preferential treatment in almost all countries. Finally, most project countries have gone through a structural adjustment programme. Such a programme typically involves macro-economic policies, especially monetary & fiscal policies that result in financial repression leading to non-availability or high cost of capital.

3.6.2 One of the consequences of the liberalisation measures discussed above has been an increase in the competitive pressures faced by the firms in the project countries. In the pre-liberalisation days many of these economies had seen significant unrelated diversification by large firms. The inefficiencies resulting from such diversification could be sustained due to protection. Once the competitive pressures increased the process of corporate restructuring has begun. A significant increase has been observed in the M&A activity in India, South Africa and to an extent Kenya. In both India and South Africa some kind of a consolidation is taking place with firms opting out of unrelated areas and focusing on certain core sectors. As a result, while in some sectors concentration has gone down, in others it has increased.[7] Although concentration in specific sectors does not necessarily imply lessening of competition, the pressures on competition

[7] For India, some information on these issues is available in Basant and Morris (2000).

authority to understand the reasons and implications of these mergers becomes significantly higher. In Kenya, for example, many of the mergers have been attributed to the poor state of the economy that has forced firms to combine resources in order to survive. The capability required to assess the impact of these mergers in a period of transition is extremely difficult.

ASSESSING COMPETITION POLICY: DEVELOPMENTAL NEEDS AND PUBLIC POLICIES

4.0.1 In the context of the socioeconomic conditions and recent policy initiatives outlined in sections 2 and 3, this section discusses certain competition law/policy needs of project countries. It tries to bring together the analysis contained in the earlier three sections to assess the substantive needs of competition policy in the country. In the process one wishes to explore the following questions:

- Should the size of the economy or its industrial structure be considered while devising the competition policy? If yes, how?
- Do countries with diversified economies and a mature manufacturing and/or a financial sector face different competition policy challenges than those with lower levels of industrial and financial development?
- Does the emergence of the service sector as a dominant sector change competition policy needs? If yes, how?
- Are the current levels of industrial concentration important for deciding the scope of competition law?
- What role export orientation and import penetration play in determining the scope of competition policy/law?
- How should one factor in the interplay between competition law and other public policies while deciding the scope of competition law?

4.0.2 It needs to be stated at the outset that it is difficult to answer these questions even when detailed information is available. In a situation where the understanding of 'context' is inadequate, such a task becomes even more difficult. While only some dimensions of these questions will be addressed below, it is important to flag them as one needs to answer these questions at some stage. With this perspective, Table 4 summarises the discussion in the last two sections to

highlight some of the key issues and challenges facing the 7-Up countries with respect to the linkages between competition law and other policies. These challenges will have to be met in order to improve the efficacy of competition policies in these nations.

4.1 Some Dimensions of Development Needs

4.1.1 Most scholars recognize that the link between competition policy and economic development is very complex. Competition policy seeks to prevent restrictive business practices and market structures that significantly lessen competition. The objective of such a policy is to maintain and encourage competition in order to foster greater dynamic efficiency in resource allocation and maximize consumer welfare. These objectives are achieved through an inter-face with other economic policies affecting competition in local and national markets. The related regulatory policies include those relating to infrastructure (where natural monopolies are likely to occur), international trade, foreign direct investment, intellectual property rights, financial markets and privatization. Depending on its design and implementation, competition law can play an important role in determining which markets are accessible to firms and their pricing, output and other business strategies. The manner in which an optimal interface between competition interface between competition law and other policies can be achieved remains a debatable issue.[8] The experiences of the 7-Up countries reflect many dimensions of the development needs. The difficult tradeoffs involved in competition policy choices also get highlighted. Some of these are discussed below.

4.1.2 The development needs of a nation often get reflected in the objectives of competition law. Appendix Table 1 summarises the key objectives of competition law in the 7-Up nations. It also lists the objectives mentioned in the model laws developed by UNCTAD and the World Bank (OECD). While the World Bank-OECD model emphasizes enhancement of consumer welfare as the key objective, the UNCTAD model focuses on the removal of constraints on trade (both domestic and international) and economic development. It is difficult to know if these two objectives are co-terminus under all circumstance. The key point is that the listed objectives of a competition law may reflect some key concerns of a nation and the 7-Up countries provide us with an interesting variety. Price control was a key political and development issue in many countries and was seen as the major 'monopoly' related problem. Consequently, in many economies

[8] Basant and Morris (2000) summarise various elements of this debate. Also see Khemani and Dutz (1996).

competition law was preceded by price control legislation. Alternatively, price control was one of the key objectives of competition law.

4.2.2 In Tanzania, the Regulation of Price Act (1973) was promulgated to check monopolies. The competition law to regulate the liberalizing economy subsequently replaced this. The Kenyan competition law promulgated in 1988 had 'control and display' of prices as one of the key areas. This was subsequently dropped. The case was similar in Sri Lanka. In Zambia, reduction of inflation levels remains one of the objectives of competition law. In countries like India where price control was not explicitly mentioned as an objective in the competition law, several institutions have been created to perform this task in different sectors like pharmaceuticals, food etc. Such institutions existed in other countries as well.

4.2.3 Apart from price control, several other developments needs get reflected in the objectives of competition laws in the 7-Up countries. Zambia, for example, hopes to encourage innovation, ensure fair distribution of income and reduce unemployment through the competition law. The criteria provided in the Tanzanian Act for evaluating mergers explicitly state that the impact of mergers on employment (capital v/s labour intensive production), competitiveness in export markets and ability to face import competition needs to be considered. Job loss related to the M&A activity is a concern in South Africa as well.

4.2.4 The most striking statement of development needs emerges in the case of South Africa. It is useful to reproduce the objectives of the competition law in the country:

a) *to promote the efficiency, adaptability and development of the economy;*
b) *to provide consumers with competitive prices and product choices;*
c) *to promote employment and advance the social and economic welfare of South Africans;*
d) *to expand opportunities for South African participation in world markets and to recognise the role of foreign competition in the Republic;*
e) *to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and*
f) *to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.*

4.4.5 An explicit focus on 'adaptability and development of the economy', employment generation, participation in world markets, equitable opportunities for SMEs, promotion of historically disadvantaged persons and foreign competition in the economy, is peculiar only to South Africa. It is not surprising, therefore, that the ANC government focused on small business development, export promotion, market access and investment prior to addressing competition policy. (Ramburuth, 2000).

4.4.6 It is also important to recognize that often, stated objectives of a policy provide credibility and legitimacy to that policy initiative. The competition law in South Africa is probably not an exception. While implementing the law, however, black empowerment and international competitiveness arguments may not be persuasive enough for a competition authority. Enterprises in South Africa for example have complained that competition legislation prevents them from achieving economies of scale required to be internationally competitive. This especially applies to decisions to oppose mergers on grounds of increasing concentration, which also acts as a disincentive for FDI flows.[9]

4.4.7 The issue becomes even more complicated once it is recognized that the cost of capital is probably cheaper for MNCs than for domestic firms.[10] However, the cost of capital advantage may be wiped out by foreign exchange risks that a foreign investor has to face. Therefore, one needs to assess the 'level playing field' issue in the context of the country. The Kenya paper, for example, states that high political and policy uncertainties may override the advantages provided by the Act to protect foreign investment in the country.[11]

4.4.8 The conflict between industrial policy and competition law can take other forms. The Zambia report raises an interesting issue relating to the export processing zones (EPZs). While the EPZ policies are geared to improve international competitiveness, the fact remains that firms who do not operate in these areas will not enjoy similar incentives.

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[9] Ramburuth (2000), however, argues that these criteria have not over ridden the conventional criteria of efficiency and competition in the implementation of the law.

[10] The South African NRG meeting explicitly recognised the possible conflicts between competition and industrial policies.

[11] An Investment Bill has recently been published for debate that aims to revise the current Foreign Investment Protection Act.

4.4.9 The other important issue that needs some discussion in the developing country context relates to the 'structural' focus of competition law and policy. Does the focus on structure make sense in an era of globalisation, especially in situations where domestic market size is small? While Pakistan is the only country where restrictions remain on the size of the company (similar restrictions existed in India also but have been abolished)[12], most competition authorities use market share as the most important variable to analyse M&As, abuse of dominance etc. Zambia, for example, sets a threshold of 50 per cent for unilateral and concentrated market share to analyse the impact of merges and takeovers. A 33 per cent threshold is used in Kenya to assess concentration of economic power. The threshold share for market power ranges between 35-45 per cent in South Africa. Besides, Hirschman-Herfindahl index is used here to assess if a merger will have anti-competitive emergency. Investigations to evaluate monopolisation in Sri Lanka can be initiated if the market share of the firm is more than one-third. Some studies, however, have argued that given the small size of the Sri Lankan economy, the threshold should be 50 per cent (Kelegama, 2001).

4.4.10 In most of the 7-Up countries the levels of market concentration were very high in many industries when the competition law was introduced. In Pakistan, for example, a few families controlled a significant chunk of industrial assets and the average four firm concentration ratio was found to be around 70 per cent for 82 industry groups. The situation was similar in India and South Africa where large conglomerates with interlocking ownership structures, cross-holdings etc. made the distribution of industrial assets very unequal. These 'initial conditions' may have tilted the balance in favour of the 'structural' focus.

4.4.11 Overall, the working of the competition authorities in the 7-Up countries is based on the 'structural' understanding of 'competition' efficiency, abuse of market power etc; the behavioural aspects though considered are not accorded primacy. With the emerging focus on conduct in most developed countries, the competition authorities in developing countries may also need to change their criteria of assessment or use the gateways more often.[13] However, a movement

[12] The Indian Competition Bill, 2001 has imposed a very high threshold for pre-notification of M&As and even that is non-mandatory. Moreover, no threshold has been defined to assess "dominance".

[13] In Pakistan, for example, an acquisition was evaluated and found to be constituting unreasonable monopoly power. But it was allowed because the parties could justify the monopoly on the promise of increased efficiency,

from 'structure' to 'conduct' in the implementation of competition policy will require a significant increase in the capacity of the competition authority. This, however, is lacking in most developing countries, including the 7-Up countries. We shall return to this issue later.

4.5 Trade Liberalization and Competition Policy

4.5.1 It has been suggested that trade liberalization reduces the need for competition policy as anti-competitive practices are less feasible in an open economy, even when markets are concentrated. This is so because domestic monopolies or oligopolies lose their ability to exercise market power due to the threat of potential competition, irrespective of the share of imports in the domestic market. This view gets empirical support from studies that find differing degrees of convergence between domestic and international prices with the removal of trade barriers and a negative relationship between price and cost or profit margins and imports. However, some recent empirical studies suggest that effects of trade liberalization may be less significant than previously thought, raising questions about the true effect of trade liberalization on competition.[14]

4.5.2 The trade policy-competition policy interface has acquired added significance in the context of the recent discussions in the WTO forums. The emerging consensus seems to be that liberalized trade policy can not substitute for competition law; the two complement one another in promoting trade, market access, global economic efficiency and consumer welfare. Therefore, enacting a law on competition policy is necessary, even where trade has been significantly liberalized. However, the *timing* or the *sequencing* of competition laws and other liberalization initiatives continues to be a debatable issue. The basic challenge facing governments in transition economies is to figure out an optimal way of stitching the trade and competition policy together. Broadly, the consensus seems to be that liberalized trade cannot effectively substitute for competition law; the two policy areas should be viewed as complementary.

4.5.3 It may take a while before competition policy is put on the WTO agenda. However, countries that are part of blocks need to deal harmonization issues even now. The linkages between trade policy and competition policy become even more complex when a country is a member of a customs union. Zambia, for example, is already a member of the Common Market

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transfer of technology and increased exports.

[14] See Basant and Morris (2000: Chapter 7) and Khemani and Dutz (1996) for details of various arguments.

for Eastern and Southern Africa (COMESA) which envisages zero tariffs. It is expected to become a member of Southern Africa Development Corporation free trade area (SADC), which involves phased reduction of tariffs over a 12-year period. It is also a member of the South African Customs Union and a trade liberalisation agreement with EU! It has already been pointed out that import competition has already wiped out many Zambian enterprises. With high degrees of import penetration and significant trade liberalisation, a regional competition policy with in the common market may make more sense. COMESA recognizes the relevance of fair competition in the free trade area and work is underway to develop a regional competitive framework. Kenya is also a member of COMESA. In addition, it is part of the East African Community. Anti-competitive practices are prohibited within the Community.

4.5.4 Broadly, the 7-Up countries that are part of regional trading blocks will need to evaluate the possibilities of harmonising competition policy within the trading block. They will also need to explicitly assess the conflicts between trade liberalisation, harmonized competition policy and their own industrial policies. The country papers on less developed African countries suggest that these tradeoffs are real, Zambia being a clear example.

4.5.5 In sum, trade/investment policy-competition policy interface may be different for countries which are part of trade blocks making efforts to reduce tariff barriers within the block (e.g., Kenya, Zambia) or which are trying to harmonize investment incentives with their neighbouring countries (e.g., Tanzania, Kenya). The bottom-line is that in the specific context of each project country, one will have to analyze links between different policies and evaluate competition policy options.

4.5.6 The other related issue is that for countries that are highly exposed to import competition or are part of trade blocks, the linkages between anti-dumping laws and competition laws will need to be explicitly recognized. It is not entirely clear that anti-dumping laws will remain relevant once competition policies get harmonized within a trade block. These and related issues will need to get sorted out.

4.5.7 For the tradable sector the linkages between trade policy, competition policy and industrial policy become quite complex when trade liberalisation takes place. The issues, however, are different for the non-tradables. One implication of this is that the administrative foci of competition policy should tackle two inter-related issues. One, differences in the requirements to

ensure competition in sectors producing tradable vis-a-vis those producing non-tradable products. Two, competencies needed to administer competition policy in these sectors. One can also argue, that in the case of tradable products and services, consumers may not get a raw deal due to a variety of factors. Import liberalization in the form of reduction in tariffs and removal of quotas can significantly improve the contestability in the markets dealing with tradables. It is more difficult to ensure competition in the markets dealing with non-tradables.

4.5.8 Many of the services, including those relating to infrastructure, are largely non-tradable. Privatization initiatives for these sectors initiated in the project countries may have led to significant reduction in entry barriers, complementing the competitive environment created through trade liberalization and more liberal policies relating to FDI. This brings into focus regulation needs of infrastructure sectors as these are being privatized. The links between sectoral regulation and competition policy will then need to be resolved. It is to the discussion of these that we now turn.

4.6 Links between Sector Specific Regulation and Competition Law

4.6.1 Despite significant changes in technology, several segments of infrastructure (telecom, power, transport etc) will retain elements of natural monopoly. As a result some kind of price regulation will remain a necessity. Typically, sector specific regulatory authorities do price determination in such cases. The competition related activities are overseen in some nations by the sector regulator and in others by the competition authority. With privatisation of infrastructure sectors, most project countries have created sector specific regulatory authorities. The division of labour between sector specific regulatory bodies and the competition authorities is often unclear; sectoral authorities are typically assigned tasks (other than price determination) that impinge on competition in the sector. Moreover, sector specific regulatory authorities are not restricted to infrastructure sectors; specialized bodies also often regulate activities not necessarily having natural monopoly elements. This makes the overlap between the functions of sector specific and competition authorities even more complex.

4.6.2 The Bank of Zambia has statutory powers to ensure that competition in the provision of financial services should not be restricted. In fact, it has powers to prosecute a financial institution that contravenes this provision. Similarly, Energy Regulation Board (ERB), recently stopped a fuel price hike by the dealers on the ground that the hike was a result of collusive activities.

Interestingly, Zambian Competition Commission (ZCC) has also threatened to prosecute the fuel dealers for collusive activities.

4.6.3 The other clear overlap in Zambia exists between the tasks of the ZCC and the Securities Exchange Commission (SEC). The SEC often requires the acquiring entity to make a mandatory offer to minority shareholders to purchase their equity. This can result in total control of the company by the acquirer. It is argued that if such SEC practices continue, trading of shares in the Lusaka Stock Exchange will eventually get wiped out! As a result, ZCC is unwilling to permit such transactions. However, in practice, SEC's decisions are upheld even when ZCC has opposed such transactions.

4.6.4 It is unclear if similar conflicts between securities boards and competition authorities can arise in other countries. In principle, a bid may be in compliance with a country's takeover code but may not be in accordance with the merger control regulations. In several situations an acquiring firm or an existing owner may wish to control a large proportion of shares in the company. In India, for example, several domestic firms have increased their shareholdings as they wish to avoid the possibility of a takeover. Should the competition authority be concerned about the distribution of control in a firm?

4.6.5 The conflicts between sector specific regulation and competition regulation are more common. In Pakistan, for example, regulatory authorities for several utilities (telecom, natural gas, power etc.) have been set up. These authorities work independently. They may seek advice from competition authority but are not legally bound to do so. The situation appears to be similar in Kenya and Sri Lanka.

4.6.6 The case of Tanzania is interesting as the sector specific regulation was initially under the purview of the competition authority. Subsequently, some sector specific regulatory authorities were created. The conflicts between competition authority and Tanzania Communication Commission (TCC) became obvious when the former filed a complaint against the latter for permitting dominance of two cell phone companies (Mobile and Tritel) in the country. The TCC had to provide detailed explanations for its conduct and subsequently registered other cell phone providers e.g. Vodaphone.

4.6.7 The government is now creating two multi-sector regulatory agencies; one to regulate utilities (electricity, telecom, electronic broadcasting, natural gas and postal services) and the other to regulate the transport sector. The new legislation is expected to provide clear guidelines regarding the distribution of responsibilities between the competition authority and the sector specific regulators. Apparently, the Competition Tribunal will also act as the final appellate body for the multisector regulatory agencies. Thus, Tanzania seems to have recognised the potential overlaps between sector specific regulation and competition law. However, it is not entirely clear how the harmonization of competition policy within the East African Community will affect the division of labour envisaged by them.[15]

4.6.8 The case of South Africa is somewhat different as they have 'privatized' utilities and infrastructure services through 'strategic equity partners' who bring in technical and management expertise along with capital. In some cases, limited time monopoly (telecom, fixed line) has been provided. The fixed line operator can also provide value-added services and compete with private operators. Since the fixed line operator owns the network, private operators providing value added services have often complained about access to the network. Along with these privatisation efforts, sector specific regulatory authorities have also been set up in South Africa. For example, the issues relating to telecom are now covered by the Independent Commissions Authority of South Africa (ICASA).

4.6.9 The problems faced in Tanzania and South Africa can arise in other countries as well. Since the sector specific regulatory bodies are often responsible for defining 'entry conditions', their actions directly affect the nature of competition after entry has taken place. Consequently, the conflicts between sector specific regulators and competition authorities are expected to arise. Basant (2000) has highlighted the possibilities of such conflicts in the case of Indian competition authority and the telecom regulator. The Indian law stipulates that matters relating to 'competition' will be outside the purview of the telecom authority and will be dealt with by the competition authority. The issue then is what constitutes 'matters relating to competition'.

[15] The Tanzania paper also gives the impression that the East African Community may also harmonize sector specific regulation.

4.6.10 How to ensure clear demarcation of the jurisdictions of the two authorities? How should the boundaries of the two authorities be defined? Kenya, for example, excludes infrastructure from the purview of the competition authority. Is this the right approach? An unclear division of jurisdictions can lead to unnecessary litigation and the associated delays.

4.6.11 There are no clear solutions to this problem but an explicit recognition of the issue is a good starting point. One can then work towards a remedy. The South African example is very instructive in this regard. The South African government recognized the fact that the overlapping jurisdictions between competition authorities and regulatory bodies will create problems as firms will take their cases to the forum they believe to be most favourable. Therefore, it was stipulated that the Competition Act did not apply to 'acts subject to or authorized by public regulation'. But firms used this provision to argue in the High Court that the Competition Act did not apply to the agricultural and banking sectors, as there are a series of other acts regulating the practices of these sectors.[16] As a result, the stipulation was removed from the Act. The South African Competition Act provides for consultations to avoid situations of conflict between competition authority and regulatory agencies. A Regulator's Forum is being established to implement this provision. Under this provision, the Commission is responsible to 'negotiate agreements with any regulatory authority to coordinate and harmonize the exercise of jurisdiction over competition matters within the relevant industry or sector? It seems that all 7-Up countries can learn from this experience. In addition, the Tanzanian experience should also be looked at more closely.[17]

[16] Interestingly, in the case of a proposed merger between two of the four national retail banks, the courts, ruled the jurisdiction lay with the Minister of finance. The Competition Tribunal, therefore, could not decide on the merger. The Competition Commission prepared a report for the Minister of Finance opposing the merger on grounds of likely reduction in competition. The Minister followed the Commission's vein and disallowed the merger.

[17] The Competition Agency in Zambia has a representative on the Boards of sector specific regulatory authorities. This representative is expected to address competition related issues as when they arise. We do not have enough information to analyse if this process works well and minimises the overlaps between the two authorities. More details will be useful for all the 7-Up countries. The report of the Zambia NRG meeting held on November 22, 2001 indicates that cooperation between sectoral authorities and the computation agency in mandatory in the country. No details of this co-operation are readily available.

SCOPE/COVERAGE OF COMPETITION LAW AND THE LEGAL FRAMEWORK

5.0.1 The scope of competition law and its framework of implementation vary significantly across countries. Tables 5 and 6 suggest that the project nations are no exceptions. While some countries like India and Pakistan have had competition law for three decades, others like Zambia and Tanzania have introduced one in the mid 1990s. Apart from the history, the countries seem to vary on several other counts. For example, the coverage of law is different across countries: some countries include unfair trade practices while others do not; some require pre-notification and approval of all mergers, while others need such approval only for horizontal mergers & acquisitions and still others do not need approval of competition policy at all. Some competition authorities are also enforcement agencies, while others essentially have investigative and advisory roles. Some nations have a separate consumer protection and sector specific regulation and others do not.

5.0.2 The literature has identified independence of the competition authority, clearly defined jurisdictions and transparency in its working as some of the most important elements of the required legal and administrative framework. A review of the country papers and the information summarized in Tables 5 suggests that exploration of the following issues and questions will be of relevance from the point of view of scope of competition law. Once again only a few of these issues will be dealt with in the subsequent discussion.

- Should there be a provision for cross border abuses or extra-territorial jurisdiction? If yes, what form should it take?
- What practices should be covered by *per se* rules and for which practices should a *rule of reason* be applied?
- Are pre-notification of M&As and their approval by competition authorities desirable? If yes, should it be done for all mergers as in Tanzania and Sri Lanka or only for horizontal mergers as in Kenya and Zambia or for *relatively large* M&As as in South Africa (and now proposed in India)?
- Should there be explicit provisions for interlocking directorates?

- Should price control be part of competition authorities job, as is the case in Kenya?[18]

5.1 Extra-territorial jurisdiction

5.1.1 Utilization of the 'effects doctrine is generally recommended to take care of extra-territorial abuses. Appendix Table 2b shows that of the 7-Up countries, Pakistan, Kenya and Tanzania do not have provisions to deal with such cases. India, South Africa and Zambia on the other hand have explicit provisions for tackling extra-territorial competition issues. Sri Lanka does not have an explicit provision but did use the 'effects doctrine" to assess one case. Countries that do not have such a provision need a modification in their law.

5.2 Abuse of dominance

5.2.1 All 7-Up countries except Pakistan have laws that do not prohibit market dominance per se; only the abuse of dominance is illegal (See Appendix Table 3a for details). The other key difference across the project countries is the criteria for ascertaining dominance. South Africa defines the threshold as 45 per cent market share, while the old Indian law puts the figure at 25 per cent. The World bank-OECD model law suggests a threshold of 35 per cent while the UNCTAD model is silent in this regard. Other countries do not define a threshold. In fact, the new competition bill of India also does not define any threshold for dominance. It is not entirely clear if a threshold should be defined, as there are no clear determinants of what constitutes dominance. There is no one-to-one correspondence between abuse and market share. The advantage of having a threshold is that firms with smaller market shares with limited impact on the market fall outside the purview of 'abuse of dominance' investigations, focusing the investigations on a specific segment of firms.

5.3 Restrictive and Unfair Trade Practices

5.3.1 The coverage of restrictive trade practices is virtually the same in all project countries (see Appendix Table 3b). Only competition laws in India, Tanzania and Zambia cover unfair trade practices (See Appendix Table 3d). Typically, if competition laws do not cover these practices, the consumer protection laws include them. Surprisingly, Kenya and South Africa, where unfair

[18] The relevant sections on Price Control in the Kenyan competition law remain as part of the Act but are no more operational as price control itself has been abolished.

trade practices are not included in their competition laws also do not have consumer protection laws. This gap will need to be rectified.

5.4 Links between Competition and Consumer Protection Laws

5.4.1 Should unfair trade practices be under the purview of competition authority? Linked to this issue is the question whether Competition Law should encompass consumer protection (as in Tanzania and Zambia) or competition issues should be made part of Consumer Protection law (as is being proposed in Sri Lanka). Or should we permit overlap in the scope of competition and consumer protection laws as is evident in the case of India? These issues need to be debated. The country papers do not give a clear signal.

5.5 Dealing with Mergers & Acquisitions: Issues Relating to Approval and Pre-notification

5.5.1 In general, combinations that are likely to result in situations where competition will be limited are prohibited. All 7-Up nations have provisions to this effect (see Appendix Table 3c). The aspect that varies across nations relates to pre-notification of mergers and acquisitions. The UNCTAD model law recommends pre-notification in cases where the combination may lead to market power especially in markets where concentration or entry barriers are high. The World Bank-OECD Model is silent on the pre-notification issue. The 7-Up nations use three approaches:

- Pakistan, Sri Lanka, Kenya, Tanzania and Zambia (only horizontal) require that all combinations are notified and approved;
- South Africa requires pre-notification and approval above a threshold;
- India does not require any pre-notification. Even the new competition bill does not make pre-notification mandatory for entities above the defined threshold limits.

5.5.2 Pre-notification and approval have significant implications for the workload and learning of the competition agencies. South African competition law has recently changed the provisions regarding pre-notification of mergers. Earlier it was compulsory to give a pre-merger notification. This placed great demands on the Competition Commission in being able to process a very large number of merger notifications in addition to undertaking detailed analysis of large mergers with

competition concerns in order to satisfy the Competition Tribunal. The amendment is partly motivated to reduce the large workload. According to the amendment, all mergers over a certain minimum threshold must be notified. For mergers above a second, higher, threshold the Tribunal must make a determination based on the recommendation of the Commission and other representations. The Commission may rule upon mergers between the two thresholds. The Tribunal can review these decisions in case the parties decide to appeal against them.

5.5.3 The pre-merger notification issue has to be assessed on at least three grounds:

- Are the thresholds such that inconsequential merger notifications are adding to the workload of the competition authority?
- Is the threshold too high to create conditions whereby anti-competitive mergers will take place? This is important, as the de-merger process is very complex.
- Is the threshold so high that the competition authority will not get adequate number of cases to analyse and move up the learning curve?

5.5.4 Overall, the objectives relating to workload, learning and safeguarding the competitive process will need to be optimized.

5.5.5 The details available in the country papers are not adequate to critically evaluate the scope and coverage of competition law across the 7-Up countries. A few inadequacies in the coverage and implementation of competition law highlighted in the country papers may, however, be noted.

- Certain project countries (e.g. Pakistan, Kenya, Tanzania and to an extent Sri Lanka) are not able to deal with cross-border abuses.
- The law in Sri Lanka does not have explicit provisions to deal with horizontal and vertical restraints.
- Public sector/state monopolies are outside the purview of competition law in Pakistan.[19]

[19] Surprisingly, while public sector monopolies are within the purview of the current competition law in Sri Lanka, the sector is outside the purview of the proposed Consumer Protection Authority Bill that will supersede the existing competition law.

- The privatization process is outside the purview of the competition authority in Zambia. This may imply that the dominance created through the privatization process would not be investigated.[20]
- Restrictive Trade practices, particularly refusal or discrimination in supply and tied sales are not adequately investigated and prosecuted by the Kenyan competition authority.
- While the Competition Law does prohibit collusive tendering in Kenya, absence of a well-defined relationship between the CA and the Government tender boards, make implementation of the provisions difficult. The potential for such collusion is very high as the Government of Kenya is a major buyer in the economy and operates through Ministerial Tender Boards, whose operations are not very transparent.
- Vertical mergers are typically allowed in South Africa under the assumption that typically only horizontal mergers have an adverse impact on competition.

5.6 Sanctions and Relief

5.6.1 Various types of sanctions and relief are provided for in the competition laws of the 7-Up nations. Appendix Table 4c provides the details. Cease and desist orders, fines, penalties, de-merger, division of entities etc. are the main provisions. The key issues that need to be evaluated in this regard relate to (a) the level of penalties, fines etc. and (ii) inclusion of prison sentences for competition cases as is done in Sri Lanka, Tanzania and Zambia.

5.6.2 The fines are often very low in developing countries. The paper on Kenya specifically mentions the low levels of fines. Although detailed information is not available, the situation is unlikely to be very different in other countries. Therefore, fines and penalties need to be increased to create disincentives for anti-competitive activity. It is also believed that prison sentences in developing countries can have an even more salutary effect! Besides, adverse publicity for well-known firms in the media can also deter anti-competitive practices.[21] Broadly, the 7-Up project nations will have to assess if the sanctions are significant enough to deter anti-competitive practices as litigation is a very expensive and time-consuming process.

[20] Based on presentations made at Goa. I need to check this out.
[21] Based on discussions at the Goa meeting.

CAPABILITIES AND ADMINISTRATIVE REQUIREMENTS

6.0.1 Most 7-Up countries have very limited experience of competition related regulation. And, therefore, the administrative systems are needed to facilitate rapid movement on the learning curve. Among other things, administrative aspects include autonomy of the competition authority, its internal organisation and the powers invested with the authority. Table 6 summarises the legal and administrative framework of competition law in the project countries.

6.1 Powers of Competition Authority

6.1.1 Several questions regarding the powers of the authority are important. Should the authority only have investigative and advisory roles or should it also have judicial powers? Should its judicial powers be restricted to restrictive and unfair trade practices as is the case in India and Kenya or for all anti-competitive practices as seems to be the case in most other project countries. Should the judicial review be done by the regular courts as in India and Pakistan or by competition tribunals as in South Africa and Tanzania? The case of South Africa is particularly interesting as adjudication process under the competition act is not even part of the judicial system. They have specialised judicial authority for competition related cases. In doing so they have followed the recommendations of the World Bank-OECD model law (see, Appendix Table 4a for details). However, no clear answers emerge on this issue.

6.2 Separation of Investigative and Juridical Functions

6.2.1 Should the investigative and judicial roles of the competition authority be clearly separated? In many cases (e.g., India, Kenya, Tanzania, Zambia) these are not clearly divided and the Competition Commission performs both. In South Africa the Competition Commission at one level is merely an investigative agency with Competition Tribunal performing the judicial and to some extent enforcement function. Is this a useful model? Who should identify cases for investigation?

6.2.2 It is well understood by now that the investigative/prosecutorial and adjudicative functions need to be separated for the proper functioning of a competition authority. Such a separation of powers is explicit in the case of South Africa. As a result the Competition Commission and the Tribunal are able to act independently of each other. The same does not seem to be true for other countries. Therefore, in countries where these functions are not separated (e.g. in India where it is being attempted now), there is an urgent need to do so (see Appendix table 9).

6.3 Independence of Competition Authority

6.3.1 How to ensure the independence of the authority? Should it be part of a Ministry, as is the case in most countries? Who should appoint commission members? Should the members have fixed terms where the appointing authority is not able to displace them? What should be the composition of the authority, lawyers, judges, industrialists, civil servants, members of different stakeholder groups? Zambia's example is interesting in this context as its Competition Commission has representatives from Chambers of Commerce, law Association, Federation of Employers, Trade Unions, Consumer Groups, Engineering Institute, Account Professionals and Economic Association. Is this a good model? Does it facilitate independence and has less possibility of regulatory-capture? How many members the authority should have and what should be its budget? Where should these resources come from, allocations from state budgets or user fees?

6.3.2 The World Bank-OECD model law suggests that the enforcement agency should be independent from any government department and should receive its budget (and report) directly to the legislature/President of the nation. However, except for Tanzania, none of the 7-Up nations have such provisions (see Appendix Table 4b). The budgets are small and given as government grants. Only Zambia seems to have a decent budget in relative terms and it is also the only country that is not completely dependent on government grants as it charges processing fees.

6.3.3 The other aspect of autonomy/power is whether the decisions of the CA are binding or are merely recommendations subject to approval of a higher authority. Appendix Table 9 shows that except for Kenya, Sri Lanka and Tanzania, the orders of the CA are binding. Apart from the separation of functions and the binding nature of CA's decisions, the autonomy of the competition authority is dependent on whether the government interferes in its functioning, and the availability of financial, human, and other resources.

6.4 Government Intervention

6.4.1 Some country reports provide instances of government intervention in the functioning of competition authorities. In Pakistan, for example, the competition authority tried to curtail cartelization and collusive pricing by cement and *vanaspati ghee* manufacturers but the

government intervened to fix prices at a 'mutually acceptable' level. One can argue that the possibilities of such intervention increase if the competition authority is under a Government Ministry, say Ministry of Industry and Commerce. In Tanzania, for example, the Competition Authority is now made independent from the government, presumably due to pressure from the World Bank.[22] That such a separation may be necessary is also brought out by a competition-related case in Tanzania. Tanzania Breweries was found by the Competition Authority to be abusing its monopolistic position and was directed to resist from undertaking these anti-competitive practices. The company accepted its act to be illegal but justified its actions on the ground that the regulations to carry out the Competition Act were not in place and therefore, the Commission had no mandate. The Permanent Secretary of the Ministry of Industry and Trade who was a member of the Company's board supported the companies stand![23]

6.4.2 In most countries, competition authorities are housed within a government ministry. One needs to assess the pros and cons of having such an administrative framework.

6.5 Capabilities and Resource Availability

6.5.1 As mentioned, many 7-Up countries have little experience or jurisprudence in the regulation and arbitration of competition matters. These countries will have to acquire capabilities in this area. Even countries like India and Pakistan, that have had competition law for several years do not have requisite capabilities as the basis of regulating competition has changed; the world is moving towards assessing anti-competitive 'conduct' rather than focusing on potential anti-competitive 'structure'. The methods of analysing the static and dynamic consequences of a given structure or conduct have become more and more sophisticated and few developing countries have the capabilities to effectively apply these methods. Moreover, the kind of databases and information that is available with the competition authorities is simply inadequate to undertake proper analysis of M&As and other types of firm behaviour. Many 7-Up countries have upgraded the facilities available to the competition authorities with some investments in IT

[22] In practice, however, this independence does not seem to exist (see Appendix Table 4b).

[23] In the Sri Lanka NRG meeting held on November 2, 2001, it was emphasized that the actions of the competition authority in the country are constrained because of the "commandeering" by the Board of Directors appointed by the parliament. Even when the investigations find entities guilty, action is rarely taken. Moreover, the Board of Directors also gets changed often changed according to the whims of the politicians, making the situation even more complicated.

infrastructure library etc. But in the absence of good databases and capabilities to analyse markets, the possibilities of regulatory capture are very high. Research staff positions in many countries are not filled and training is rarely undertaken.

6.5.2 As reported above, the budgets of competition authorities are low and at times, as in the case of Pakistan, declining. Since the resource availability is tied to government budgets, fiscal deficit reduction can adversely affect the Authority's budget. Sanctioned amounts are not disbursed or utilized. The only country that seems to be significantly better equipped in every regard is South Africa. The Competition Authority here is structured in six divisions: mergers and acquisitions, enforcement and exemptions, compliance & advocacy, policy & research, legal services and corporate services & training. The efficiency in the office was quite high: average period for resolution of mergers was 55 days and for complaints 100 days. This has been partly made possible due to the computerized Case Management and Tracking System, which monitors the progress of cases and enables, authorized personnel to view its progress online. The Tribunal has continuous training and development programmes (six days per person per year). Financial support is also provided for staff to pursue higher studies. But despite all these investments, trained staff is difficult to find. Besides, staff turnover has been high in recent years presumably due to low salaries as compared to what the corporate sector offers. Finally, the competition authority still finds itself inadequate to match the resources and skills available to large conglomerates. If the competition authority in South Africa cannot match the resources available to the private sector, it is unlikely that competition agencies in any other project nation will be able to match the skills and resources of MNCs and large corporates.

6.5.3 While such capabilities are built up, the competition authorities may need to take help of outside agencies to evaluate competition-related cases. Pakistan seems to have tried it out in a few cases. Some flexibility to use outside experts will be very useful. Cooperation with competition authorities for training and capability building purposes is another option. International funding agencies often support such endeavours, as was done in the case of Tanzania.

6.5.4 The data on the available infrastructure the capabilities of the competition agencies are not strictly comparable. A few interesting insights emerge from the questionnaire data (The details are provided in Appendix Tables 5 to 11).

- The competition agency of Pakistan, Kenya, Sri Lanka and Zambia maintain databases on domestic industry but the coverage is inadequate. Other countries do not maintain any databases. Except for Zambia, none of the other agencies has access to global databases or databases of other competition agencies. The library and newspaper clipping/ scanning facilities also seem to be inadequate in all 7-up countries (Appendix Table 5).
- The size of the competition agency ranges from 20 (Sri Lanka) to 96 (India). However, in India (as well as Pakistan), the support staff dominates the composition with few professionals and members. The Zambian competition agency has more board members than staff! Other nations seem to have a more balanced composition. (Appendix Table 6)
- Except in South Africa and Zambia the salaries paid to employees of the competition agency are lower than those of the private sector. In Sri Lanka, the professional staff is paid salaries that are lower than the government sector.[24] Obviously, in all these countries, it is difficult to attract good professionals to the competition agencies. (Appendix Table 7)
- India and Pakistan have no regular training programmes for their competition agency employees. Sri Lanka has only occasional programmes. Agencies of Kenya, South Africa and Zambia do have training programmes of their own. It is, however, difficult to assess the quality of these programmes. (Appendix Table 7).
- Bulk of the budget resources is spent on salaries and establishment. Very little is spent on research and investigations, publications and meeting / conferences. (Appendix Table 8)
- As a result the outreach and advocacy functions of the competition agencies may have taken a back seat. Although most agencies reported organisation of conferences, issuance of press releases and publication of educational material, limited availability of funds must have constrained advocacy and outreach efforts of the competition authorities (Appendix Table 11).
- Only the competition authorities of Sri Lanka and Zambia involve consumer and civil society for their advocacy and outreach programmes (Appendix Table 11).

[24] The Sri Lanka NRG meeting held on November 2, 2001 also raised the issue of very low salaries.

IN LIEU OF CONCLUSION

7.0.1 The comparisons attempted in the paper are still quite tentative. It is difficult to derive various nuances of the 'context' of competition policy in each project country. One hopes to partially fill this gap in understanding when this paper is discussed.

7.0.2 To conclude, one needs to highlight the importance of the process that is used to evolve a competition policy. Significantly, in most project countries there was no participation of stakeholders in the formulation of competition policy. South Africa's new competition law not only benefited from their interaction with international expertise but from the negotiations between the government, business and labour under the auspices of National Economic Development and Labour Council (NEDLAC).[25] One can argue that the consumers should have also found representation in this process but the fact remains that such negotiations can take the form of public debate and provide legitimacy to the policy that is evolved.

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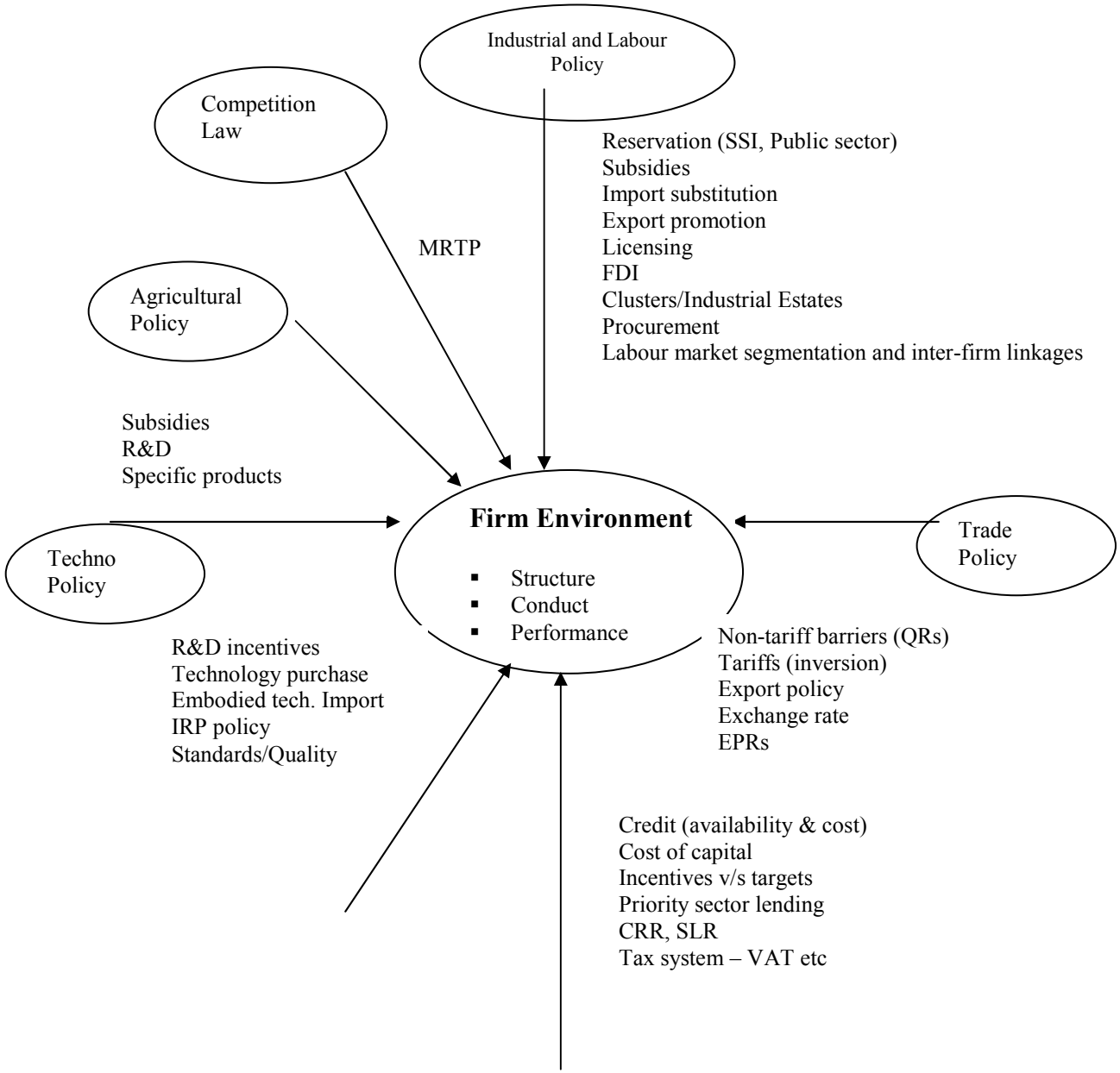
[25] NEDLAC is organisation formed to debate all major legislative changes.

Figure 1: The Interface between Competition Policy and Other Public Policies



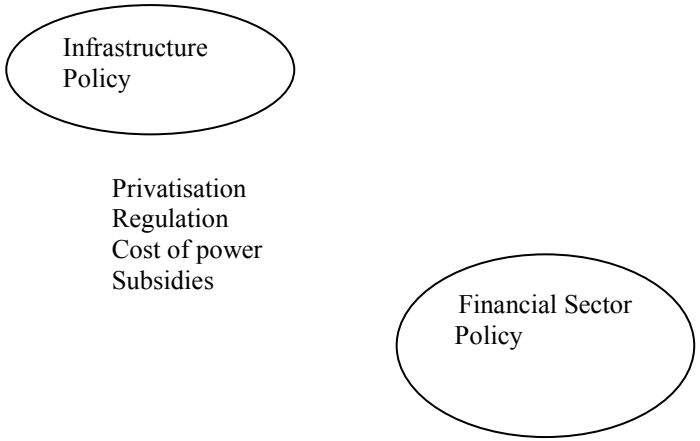


Table 1 : Socio-economic Characteristics of 7-Up Project Countries

	India	Kenya	Pakistan	South Africa	Sri Lanka	Tanzania	Zambia
Population, millions, 1999	998	29	135	42	19	33	10
GNP, billions US$(PPP), 1999	2,144.1	28.7	236.8	350.2	58.0	15.7	6.8
GNP/Capita US$(PPP), 1999	2,149	975	1,757	8,318	3,056	478	686
Adult (>15) Illiteracy Rate (%), 1998: Male Female	 33 57	 12 27	 42 71	 15 16	 6 12	 17 36	 16 31
Industrial Structure (Value as a % of GDP)							
Agriculture	31 28	29 27	26 26	5 4	26 21	48 48	18 17

Industry	27 25	19 17	25 25	40 32	26 28	16 14	45 26
Manufacturing	17 16	12 11	17 17	24 19	15 17	9 7	32 11
Services	42 46	52 56	49 49	55 64	48 51	36 38	37 57
Levels of Concentration	High, declining	High, competition high in many sectors	Very high (data old)	Very high esp. Conglomerate, but declining	High	High	Competition from imports high
Manufacturing Sector Diversification	Significant	Very limited	Moderate	Significant	Limited	Very limited	Very limited
Exports of Goods & Services as a % of GDP	7 11	26 25	16 15	24 25	30 36	12 20	36 29
Imports of Goods & Services as a % of GDP	10 13	32 35	23 21	19 25	37 42[4]	35 27	58 34

1. Data on concentration are not available for Kenya and Zambia, but the papers suggest that competition is high in many sectors, petroleum, telecom, & cement being exceptions. The country paper on Sri Lanka does not report any data on concentration but Kelegama (1992, 2001) suggests that it was high in the late 1980s. These papers also suggest that industrial diversification was low in Sri Lanka.
2. PPP – Purchasing Power Parity.
3. The estimates for the last row are computed by us on the basis of data reported in the World Bank Report. The country paper on South Africa reports imports/GDP ratio to be 23 per cent for 1999.
4. Mainly intermediate and capital goods.

Source: World Development Report, 2000/2001 and Preliminary Country Papers.

Table 2 : Importance of Mergers & Acquisitions and Foreign Direct Investment in 7-Up Countries (In US$ million)							
	India	Kenya	Pakistan	South Africa	Sri Lanka	Tanzania	Zambia
Cross border M&A sales by country of seller (1990-99)	3660	25	3491	9821	591	76	370
Cross border M&A sales by country of purchaser (1990-99)	1760	-	NA	19543	36	NA	15
Annual average FDI inflows (1990-99)	2320.5	28.8	634.5	1365.5	201.2	143.7	137
Annual average FDI outflows (1990-99)	127.8	17.4	-2	1162.3	3.3	NA	NA
FDI inward stock as of 1998	19416	826	9778	19048	2273	987	1932
FDI outward stock as of 1998	1061	186	468	30115	41	NA	NA
Average annual inward FDI flows as a % of gross fixed capital formation (1994-98)	2.6	1.7	6.72	5.8	5.6	12.2	27.7
Average annual outward FDI flows as a % of gross fixed capital formation (1994-98)	0.1	0.5	-.1	7.7	0.1	NA	NA
Inward FDI stock as a % of GDP (1998)	3.4	7.6	14.4	13.4	13.2	9.9	52.8
Outward FDI stock as a % of GDP (1998)	0.2	1.5	0.7	24.8	0.2	NA	NA

Source: World Investment Report, 2000

Table 3 : Evolution of Economic Policies in 7-Up Project Countries							
	India	Kenya	Pakistan	South Africa	Sri Lanka	Tanzania	Zambia
Early Policy Thrust	Public investments in heavy industry, SOEs, closed economy, import substitution	Price & other support for agricultural growth	Nationalisation in 1970. Liberal earlier	Apartheid, Heavy industry, processing of minerals, cheap power, high tariffs	Export led growth, liberalisation introduced in 1977	Nationalisation, closed economy, price control	Closed economy, state control, high protection
Broad Policy Focus in the 1990s	Liberalisation, reduc-tion in entry barriers	Liberalisation	Liberalisation	Liberalisation, capability building	Liberalisation and export promotion	Liberalisation initiated in mid 1980s, export promotion	Liberal, market based
Structural Adjustment Programme	Yes	Yes in 1979 and in 1990s[1]	Yes?	No?	Yes	No	Yes
Trade Liberalisation	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Trade block or free trade agreement	None	COMESA & East African community	None	With EU	With India	East African Community, COMESA	SADP
Privatization	Underway, slow progress	Underway	Underway, Slow(?)	Underway,[3] significant progress with recent focus on infrastructure	Yes, mainly infrastructure	Underway, mainly in agriculture, financial service and transport infrastructure	Yes, details unavailable
Small Scale Industry (SSI)	Reservation, special programmes/ incentives	Special incentives	Better access to credit?	Special programmes/ incentives, credit, empowerment	Incentives for technology up-gradation, tax concession	NA	Licensing incentives
Investment	Reliance on corporate investment, liberal FDI, technology policies	Liberal FDI policies, harmonisation[4]	Liberal FDI, technology Imports(?)	Tax holidays, SDI, to attract FDI in export oriented manufacturing	Sectoral focus, tax holidays	Liberal policies to encourage local and foreign investment	Liberal policy
Procurement	Preference for	No price	NA	Preference for	NA	NA	Programme

	SSI, SOE, less but continue	or related preferences for SSIs		historically disadvantaged peoples			for SSI, local suppliers
Price Control	Exists but declining	Decontrol initiated in 1986[5]	Exists	NA	Exists for some products[6]	Abolished	Yes,? Decontrol initiated?
Labour Policy	No major liberalisation	Liberalised, exit easier	NA	Made liberal for SSIs, acts to avoid discrimination	Focus on productivity increase, rigidities in formal sector	NA	Not liberalised
Financial Sector Policy	Being liberalised	Being liberalised	Being liberalised?	Already developed?	Being liberalised	Being liberalised	Being liberalised

1. IMF Poverty Reduction Growth Facility; 2.Special condition for imports? (MNC?); 3. Includes strategic equity partnerships (foreign) 4. Harmonisation of investment policies in Kenya, Tanzania & Uganda. 5.& 6. Also part of competition law.

SOEs – State Owned Enterprises; FDI – Foreign Direct Investment; SDI – Spatial Development Initiative

Table 4: Links between Competition Law, and Other Policies: Key Challenges

Policy	Relationship/Phenomenon	Key Challenges	Relevance for 7-Up Nations
Industrial Policy	• Deepening and diversification of the manufacturing sector may get constrained by significant competition • Increase in share of the tertiary sector • High concentration may/may not imply existence of anti-competitive situations	• Should competition policy (CP) be used for domestic manufacturing development? • Services is a non-tradable sector with different requirements of CP • Many of the service sectors relate to infrastructure. Links of CP with sector specific regulatory authority important • A shift in focus from structure to conduct, and the associated capability requirements	• Especially important for Tanzania, Zambia and Kenya (?) • All 7-Up nations • All 7-Up nations
Trade Policy	• High degrees of import penetration increases contestability in the market • Anti-dumping • Customs Union	• Inverted tariff structures • Extent of the tradable sector • Mortality of domestic firms • How to reduce adverse effects of import competition • Harmonisation of competition policies within the union and the role of anti-dumping	• All, especially Zambia, Kenya and Sri Lanka • Pakistan, India, Zambia (?) • Kenya, S. Africa, Tanzania & Zambia
FDI Policy	• FDI incentives, monopolies to MNCs can be anti-competitive and shift the competition in their favour • Cross-border M&As • MNCs better placed in terms of access to capital	• Correction of these aberrations without reducing flows of FDI • Extra-territorial jurisdiction, collaboration with competition agencies (CAs) of other countries • Creation of a level playing field	• Sri Lanka, Kenya, Zambia (?) • India, South Africa, Zambia • All 7-Up countries? India
Privatization Policy	• Public sector monopolies get replaced by private sector monopolies • If public sector is within the scope of competition law	• How to avoid abuse of market dominance • If in infrastructure, links between CAs and sector specific authorities • Bring public sector within the purview of CA	• All nations, especially Sri Lanka, Kenya, Pakistan & Tanzania • Attempted only in South Africa and

			Zambia
Labour Policy	• Exit barriers and contestability	• Employment generation along with ensuring contestability	• All nations? Kenya & Sri Lanka have more liberal labour laws
Financial Sector Reforms	• Access and cost of capital related entry barriers	• How to make markets more contestable by reducing the differentials in the availability and cost of capital across various firms (MNCs, domestic, SMEs) • How to deal with such situations in competition cases	• Stock market most mature in India and South Africa, but cost of capital issues persist in the latter • Pakistan, Zambia, Tanzania, Sri Lanka, Kenya & South Africa (SMEs) report these concerns.
Liberal Policies for Restructuring	• M&As for higher efficiency consolidation and survival leading to higher concentration	• Capability to assess the impact of the combinations	• All, especially India and South Africa

Table 5 : Some Features of Competition Law and Other Regulations in 7-Up Project Countries							
	India	Kenya	Pakistan	South Africa	Sri Lanka	Tanzania	Zambia
Competition Legislation	In force, introduced in 1969[1]	In force since 1989[2]	In force since 1970	In force since 1979[3]	In force since 1987	In force since 1995	In force since 1995
Scope of the Law	All types of enterprises & persons	All types of economic entities	Only private sector entities		All types of enterprises?		All types of economic entities (Parastatals exepted, SSEs?)
Coverage of Law	Monopolisation, monopolistic, restrictive and unfair trade practices (RTPs & UTPs)	Price control monopolisation, restrictive trade practices	Monopolisation, restrictive trade practices Undue concentration	Monopolisation, RTPs and abuse of dominance	Monopolisation and anti-competitive practices	Monopolisation, restrictive and unfair trade practices	Monopolisation, RTPs
Merger Control	Does not exist. No pre-notification	Pre-notification and approval for horizontal M&As	Notification and approval	Approval for M&As above a threshold level	Notification and approval (Financial entities merger handled by Central bank?)	Notification and approval	Notification, approval for horizontal M&As
Provision for Cross-border Abuses/Extra-territorial Jurisdiction	Yes	No	No special provision	Yes, any activity having effect within country	No	NA	Yes
Remedies	Administrative, fines and criminal penalties	Administrative, divestiture, fines and penalties	Administrative, divestiture, fines and penalties	Administrative, divestiture and fines	Administrative, divestiture	Administrative, fines and penalties	NA
Separate Consumer Protection	Yes since 1986	No	Yes since 1995	No	Yes since 1979[4]	No, part of competition law	No, part of competition law

Law							
Sector Specific Regulation	Yes, power and telecom (communication)	Yes, power, telecom & all major crops (tea, cereals, coffee)	Yes, power, gas, telecom	Yes, power and telecom (communication)	Yes, telecom, transport	Yes, multi sector[5]	Yes, energy telecom, water and sewerage

1. Major revisions introduced in 1984 and 1991. Currently a new draft law is being discussed.
2. Earlier, competition law took the form of Price Control Ordinance introduced in 1956. The current law is being revised.
3. New Competition Act passed in 1998 and came into force in 1999.
4. A new law encompassing consumer protection as well as competition is on the anvil.
5. One regulatory agency will be for utilities (power, telecom, electronic broadcasting, natural gas, transmission and distribution and postal services) and the other for the transport sector (air, road, railways, maritime).

Table 6 : Some Aspects of Enforcement Structure of Competition Law

	India	Kenya	Pakistan	South Africa	Sri Lanka	Tanzania	Zambia
Composition	Mainly legal and civil service background	Mainly civil service background	NA	Lawyers, economists and judges	Industry, law and trade and commerce	Judges, economists, commerce?	Representatives of all stakeholders
Size	84 (Incl. Members of the commission + staff of DG I&R[1]	31	3 members + staff	70(91) sanction	34[2]	Tribunal (4), commission (5)	Executive (25), commission (13) representatives of different groups
Budget, 1999	Rs 17.6 million (1999)	Kenyan £ 898,750 (2000-01)	Rs 14.9 million	Rands 53.4 million Rands , 10 million for Tribunal	Rs 8 million[3]	129,707,205 (Released 23,582,880 only)	K 1 billion US$500,000?
Source of Funds	Budget		Budget	Budget, fees	Budget, fees	Budget	Budget, fees
Powers	Investigative, judicial[4] advisory[4]	Investigative, judicial[5] advisory	Investigative, judicial advisory?	Investigative and judicial	Investigative and quasi judicial	Investigative and judicial	Investigative and judicial?
Separate Investigative Agency	Yes, within the competitive authority	The commission itself is essentially an investigative agency	No	Competition commission performs this role	No	No	No
Enforcement Authority	Competition authority, central government	Ministry of Finance & Planning	Competition authority	Competition commission , competition tribunal	Competition authority	Competition authority (Minister?)	Competition authority
Judicial Review	Supreme Court	RTP Tribunal, High Court	High Court	Competition Appeal Court[6]	Court of Appeal	Trade Practices Tribunal	NA
Exemption	Competition authority	Competition authority	Competition authority	Competition authority	NA	NA	NA

Identification of Cases	Requests by consumers and firms, government and own initiative	Requests by firms and own initiative	NA	NA	Requests by consumers and firms, govt and own initiative	Complaints, own initiative	Request by persons, own initiative
Links with other competition agencies	None	COMESA & East African Community, yet to be formalised	None	Yes, SADC countries	None	East African Community?	

1. DG I&R – Director General of Investigation and Registration. His office supports the operation of the Competition Authority. 2. Of these sanctioned positions only 23 are filled. The questionnaire based data does not tally with the FTC Annual Report data which show sanctioned positions to be 27 of which 13 are filled. 3. Rs 5 million were utilized. 4. The competition authority can issue orders (cease and desist, compensation, temporary injunction etc) in the case of RTPs and UTPs. For concentration of economic power and monopolistic trade practices, it can only recommend actions to the government. 5. Can issue orders to desist or pay compensation for RTPs. 6. The adjudication process under the competition act is <u>not</u> part of the judicial system.

Appendix Table 1: Objectives of Competition Law in 7-Up Project Countries	
Country	**Objectives**
UNCTAD Model Law	To control or eliminate restrictive agreements or arrangements among enterprises, or mergers and acquisitions or abuse of dominant positions of market power, which limit access to markets or otherwise unduly restrain competition, adversely affecting domestic or international trade or economic development.
World Bank-OECD Model Law	To maintain and enhance competition in order ultimately to enhance consumer welfare.
India The Monopolies and Restrictive Trade Practices Act, 1969 (MRTP, 1969)	Prevention of concentration of economic power that is or that may lead to the common detriment. Specifically: (1) Control of monopolies; (2) Prohibition of monopolistic trade practices; (3) Prohibition of restrictive trade practices; and (4) Prohibition of unfair trade practices.
India The Competition Bill, 2001 (CB, 2001)	Establishment of a Commission to: (1) Prevent practices having adverse effect on competition; (2) Promote and sustain competition in markets; and (3) Protect the interests of consumers and to ensure freedom of trade
Pakistan The Monopolies & Restrictive Trade Practices (Control & Prevention) Ordinance, 1971.	The broad objectives of the law are to provide measures against: (1) Undue concentration of individual economic power; (2) Monopoly power; and (3) Restrictive trade practices
Sri Lanka Fair Trading Commission Act (1987), (FTCA).	The objectives of the FTCA are: (1) To control monopolies, mergers and anti- competitive practices; and (2) to formulate and implement a national price policy
Kenya* Restrictive Trade Practices, Monopolies and Price Control Act, 1989	The objective of Kenya's Competition Law is to encourage competition in the economy by: (1) Prohibiting restrictive trade practices; and (2) Controlling monopolies, concentrations of economic power and prices
South Africa** The Competition Act, 1998	The purpose of this *Act* is to promote and maintain competition in the Republic in order to: (1) Promote the efficiency, adaptability and development of the economy; (2) Provide consumers with competitive prices and product choices; (3) Promote employment and advance the social and economic welfare of South Africans; (4) Expand opportunities for South African participation in world markets and to recognise the role of foreign competition in the Republic; (5) Ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and (6) Promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons

Tanzania Fair Trade Practices Act (no 4) of 1994	The main objectives of the Act are to: (1) to encourage competition in the economy by prohibiting restrictive trade practices, regulating monopolies, concentration of economic power and prices; (2) Protect the consumer; and (3) provide for other related matters.
Zambia* ** Competition and Fair Trading Act, 1995	The Act has the following objectives: (1) Encouraging competition in the economy by prohibiting anti-competition trade practices; (2) Regulating monopolies and concentration of economic power so as to protect consumer welfare; (3) Strengthening the efficiency of production and distribution of goods and services; and (4) Securing the best possible conditions for the freedom of trade and expansion of entrepreneurship base

*Competition Law in Kenya predates World War II though the first formal legislation was the Price Control Ordinance of 1956 renamed the Price Control Act of 1956 and revised in 1972.
** The Act was passed by Parliament in October 1998, and came into force on September 1, 1999. The previous law, the Maintenance and Promotion of Competition Act, 1979 was considered to be ineffective, and hence, was replaced with the new Act.
***Came into force largely as a consequence of the conditionality set by the International Monetary Fund and the World Bank.

Appendix Table 2a: The Scope of Competition Law in 7-Up Project Countries - Coverage of Entities

Country	**Scope- Coverage of Entities**
UNCTAD Model Law	• All enterprises, in regard to all their commercial agreements, actions or transactions regarding goods, services or intellectual property • Applies to all natural persons who, acting in a private capacity as owner, manager or employee of an enterprise, authorise, engage in or aid the commission of restrictive practices prohibited by the law • Does not apply to the sovereign acts of the state
World Bank-OECD Model Law	• All areas of commercial economic activity • Does not derogate the privileges and protection conferred by other laws protecting intellectual property but it does apply to the use of such property in such a manner as to cause the anti-competitive effects prohibited in the competition law.
India (MRTP, 1969)	• The 1984 amendment has enlarged the scope of the act by bringing public sector into the fold of control unfair trade practices while 1991 amendment reduced its scope by removing from control the situations of aggregate concentration. • There are, of course, a few entities like defence undertakings, which are still outside the ambit of the Act.
India (CB, 2001)	• All types of enterprises and persons • All areas of commercial activity • Provides discretionary powers to the Central Government to exempt from the Act certain (1) class of enterprises for national security and public interest; (2) practices/agreements under the obligation of a treaty/ international agreement; and (3) enterprise that performs a sovereign function
Pakistan	• All private economic entities?

Sri Lanka	• All types of enterprises?
Kenya	Kenya's Competition Law includes a broad range of entities that are definable under the Act: • Consumers, customers, distributors, monopoly, undertakings, retailer, supplier, trade association, and wholesaler are all defined in the interpretation of the Act. • Government agencies, professional associations are generally subject to the same set of Competition Laws unless exempted by an Act of Parliament.
South Africa	
Tanzania	
Zambia	• The Act applies to all economic agents in relation to the supply and demand of all goods and services with a few exceptions. • Any category of agreements, decisions and concerted practices whose objective is to prevent, restrict or distort competition in the country or any substantial part of it and declared anti-competitive trade practices are prohibited by the Act.

Appendix Table 2b: The Scope of Competition Law in 7-Up Project Countries - Extra-territorial Jurisdiction	
Country	**Scope- Extra-territorial Jurisdiction & Cross Border Abuses**
UNCTAD Model Law	• Not explicitly mentioned.
World Bank-OECD Model Law	• The law is applicable to all matters specified in having substantial effects in the country, including those, that results from acts done outside the country.
India	• An important provision in the MRTP Act is its extra-territorial reach in respect of prohibited trade practices, a part of which is perpetrated within India. • This provision is similar to the "effects" doctrine followed in Europe and the United States, whereby foreign firms can be prosecuted for violations of competition law that have adverse effects in the domestic jurisdiction.
Pakistan	• The law is silent in this regard.
Sri Lanka	• This aspect is not explicitly dealt with in the law. • The FTC can follow the "effects doctrine". One international merger analysed with this approach.
Kenya	• As it stands now, Kenyan Competition Law does not address cross-border abuses and extra-territorial jurisdiction. • However, bilateral/ regional co-operation arrangements have been addressed under Treaty for the establishment of the East African Community.
South Africa	• The Act applies to all economic activities within, or having effect within the Republic of South Africa. • In this way, it provides for jurisdiction over mergers and for action against firms where the firms' primary domicile is not South Africa. • In practice, the Commission and Tribunal have recognised that it is difficult to oppose large international mergers that have already been approved in the USA or Europe.
Tanzania	• The powers are limited to the national territory and do not have extraterritorial application.
Zambia	• A merger effected abroad by transnational enterprises is held to be a merger completed in Zambia. • An entity that enters into agreement as a consequence of provisions in respect to the use, licence or assignment of rights under, or existing by virtue of, any copyright, patent or trade is protected by the Act.(?)

Appendix Table 3a: Coverage and Approach of Competition Law in 7-Up Project Countries, Monopolisation & Dominance	
Country	Coverage and ways of dealing with dominance and abuse
UNCTAD Model Law	A prohibition on acts or behaviour involving an abuse or acquisition and abuse of a dominant position of market power: • Where an enterprise, either by itself or acting together with a few other enterprises, is in a position to control a relevant market • Where the acts or behaviour of a dominant enterprise limit access to a relevant market or otherwise unduly restrain competition, having or being likely to have adverse effects on trade or economic development • Acts or behaviour considered as abusive • Predatory pricing • Discriminatory pricing • Resale price maintenance including in exported and imported goods • Restriction on parallel imports where the purpose of restrictions is to maintain artificially high prices
World Bank-OECD Model Law	• A firm has a dominant position if it can profitably and materially restrain or reduce competition in a market for a significant period of time. The position of a firm is not dominant unless its share of the relevant market exceeds 35 percent. • It prohibits abuse of dominance including creating obstacles to the entry of competing firms or to the expansion of existing competitors or eliminating competing firms from the market. However, it does not prohibit actions by a firm that creates obstacles to the entry of new firms or reduce the competitiveness of existing firms solely by increasing the efficiency of the firm taking those actions or that pass the benefits of greater efficiency on to the consumers. In case of no other remedy available the competition authority would be able to reorganise or divide to the abusing firm provided that the resulting entities would be economically viable.
India (MRTP, 1969)	• The basis of determining dominance is whether an undertaking has a share of one-fourth or more in the production, supplies, distribution or control of goods or services. • The Act contains a section, not affected by the 1991 amendment, on concentration of economic power, which allows the government to order division of an undertaking or severance of inter-connections between undertakings. • However, there has been no effective investigation by the MRTP Commission all these years to invoke this section.
India (CB, 2001)	• Prohibits abuse of dominant position by any enterprise • Dominant position is a position of strength that enables and enterprise to operate independently of the competitive forces operating in the relevant market and affect the competitors or consumers in its favour • All acts listed in the UNCTAD version are covered
Pakistan	• The Law prohibits creation or maintenance of unreasonable monopoly power in any market. • The law provides a number of possible remedies for situations of unreasonable monopoly power. These include : • the termination of interlocks or mergers by the divestiture of shares or of a position as director or officer which is held by an individual or of control or management of the undertaking; • the prohibition of proposed acquisition, and • limitations on the amount of loans which may be made by a financial institution to any single borrower or to a borrower associated with it, or • Limit on the investments of financial institutions in associated undertakings.
Sri Lanka	• Market share alone is not sufficient to declare a monopoly as illegal, • A second test determining whether the monopoly so determined is contrary to the public interest) needs to be satisfied. • Only if the second test is answered in the affirmative will the FTC proceed to the remedy stage.
Kenya	• The Act enumerates factors that may render unwarranted concentrations of economic power prejudicial to the public interest. These factors include : • Raising unreasonable product or service costs, product prices and company profits, • Reduction or limiting of competition or • Deterioration in the quality of goods and services.
South Africa	• Abuse of dominance depends on identification of a firm as dominant based on its market share being at least 45%, or less where it has market power (with the onus on the Commission to demonstrate this). • A series of acts are prohibited by a firm defined as dominant. These are: • Excessive pricing, price discrimination • Refusing access to an essential facility, and • Exclusionary acts (unless pro-competitive gains can be demonstrated).

Tanzania	• The Act does not prevent or prohibit monopolies or enterprises seeking to be monopolies "*per se*". • *It seeks to impose restrictions where monopolies are not in the public interest and are ".. Prejudicial to the public interest."* • In this respect the "detrimental effect on the economy must outweigh the efficiency advantages…." of economies of scale.
Zambia	• Restraining the abuse of dominant market position is one of the most important elements of the Act. • Dominant position exists if a firm substantially controls business throughout the country or a substantial part of it. • The position is abused if such a firm is engaged in limiting access to markets by other entities or unduly restrains competition or involved in any other act that could adversely affect trade or the economy in general.

Appendix Table 3b: Coverage and Approach of Competition Law in 7-Up Project Countries, Restrictive Trade Practices

Country	Coverage and ways of dealing with restrictive trade practices
UNCTAD Model Law	Prohibition of the following agreements between rival or potentially rival firms, regardless of whether such agreements are written or oral, formal or informal: • Agreements fixing prices or other terms of sale including in international trade • Collusive tendering • Market or customer allocation • Restraints on production or sale, including by quota • Concerted refusal to purchase or supply • Collective denials of access to an arrangement, or association, which is crucial to competition.
World Bank-OECD Model Law	It prohibits agreements between firms, among other things, that are principally meant for: • Fixing or setting prices, tariffs, discounts, surcharges, or any other charges. • Fixing or setting the quantity of output • Fixing or setting prices at auctions or in any other form of bidding • Dividing the market by any means • Eliminating from market actual or potential sellers or purchasers • Refusing to deal with actual or potential sellers or purchasers An agreement other than those mentioned above is also prohibited if it has or would likely to have as its result a significant limitation of competition.
India (MRTP, 1969)	• The MRTP Commission inquires into restrictive trade practices on the basis of complaints received from consumers, from the Director General of Investigation and Registration, upon references made to it by the Central Government or suo moto. • In the case of RTPs it can pass its own orders. These orders can either require the violator to "cease and desist" from the practice, or modify it suitably.
CB, 2001	• All RTPs listed above which cause or are likely to cause adverse effect on competition within India prohibited • In addition, prohibits practices that limit investment and technical development
Pakistan	• Unreasonably restrictive trade practice are practices, which unreasonably prevent, restrain or lessen competition. • These practices include agreements between actual or potential competitors to (1) fix prices, (2) divide markets, (3) limit production, distribution, technical development or investment or (4) boycott competitors.
Sri Lanka	• The charge of anti competitive practice alone is not enough, it is essential to prove that such a practice under was against public interest. • In this event the FTC has the power to remedy the situation by issuing an order to terminate such practice.
Kenya	• Kenya's Competition Law refers to restraints to trade as RTPs, which "have the purpose of excluding others from participating in similar or other economic activities". • Specific examples include: (1) refusal to sell good or services, (2) discriminatory pricing, (3) tied purchasing, (4) resale price maintenance, (5) market allocation, (6) collusive tendering and bidding, (7) predatory pricing • In general, refusal or discrimination in supply) go unnoticed and unreported to the Commission.
South Africa	• A practice is prohibited if it 'has the effect of substantially preventing or lessening competition in a market'. • There are also specific types of horizontal practices that are prohibited per se. These include (1) price fixing, (2) dividing markets or (3) Collusive tendering.
Tanzania	The following categories of agreements are designated as restrictive trade practices: • Agreements that (1) Reduce or eradicate the opportunities of others to take part in the production or distribution of goods or services; (2) Reduce or eliminate the opportunities of paying a fair market price to acquire or purchase the goods or services by arrangement or agreement between manufacturers,

	whole sellers, retailers or contractors. • Discriminatory agreement or arrangement between sellers or between sellers and buyer to grant rebates to buyers of goods calculated with reference to the quantity or value of the total purchases by those buyers from those sellers not to sell/ buy goods in any particular form or kind to buyers/sellers; • Arrangement or agreement between persons whether as producers, wholesalers or retailers or buyers to limit or restrict the output or supply of any goods, or withhold or destroy supplies of goods, or allocate territories or markets for the disposal of goods.
Zambia	• The Act prohibits: (1) price fixing, (2) predatory behaviour, (3) discriminatory pricing, (4) exclusive dealing, (5) bundling and tying arrangements and resale price maintenance, (6) collusive tendering, (7) market or customer allocation, sales/production, (8) refusal to supply and (9) Collective denials of access to an arrangement.

Appendix Table 3c: Coverage and Approach of Competition Law in 7-Up Project Countries, Mergers and Acquisitions	
Country	Dealing with M&A
UNCTAD Model Law	• Mergers, takeovers, joint ventures or other acquisitions of control, including interlocking directorships, whether of a horizontal, vertical, or conglomerate nature should be notified when: • At least one of the enterprises is established within the country; and • The resultant market share in the country, or any substantial part of it, is likely to create market power in the relevant market, especially where there is high degree of market concentration, barriers to entry or lack of substitutes. • Should be prohibited when: • The proposed transaction substantially increases the ability to exercise market power • The resultant market share will result in a dominant firm or in a significant reduction of competition in a market dominated by very few firms.
World Bank-OECD Model Law	• Concentration shall be deemed to arise when two or more previously independent firms merge, amalgamate, or combine the whole or a part of their businesses; or one or more natural or legal persons already controlling at least one firm acquire, whether by purchase of securities or assets, by contract or by other means, direct or indirect control of the whole or parts of one or more other firms • Concentrations that will probably lead to a significant limitation of competition are prohibited.
India	• No pre-notification. Powers to unscramble a merger if found to have an adverse effect on competition. • *CB 2001, however, prohibits M&As having appreciable adverse effect on competition. If desired by the entities, it also has provisions for review of combinations above a moderately high threshold in assets or turnover.*
Pakistan	• Prenotification and approval required for all M&As • The law prohibits anti-competitive mergers and acquisitions and interlocks between firms.
Sri Lanka	• As a matter of procedure all mergers and acquisitions resulting in a merger situation need to be notified in writing to the FTC. • After an investigation, if it is found that the proposed merger is not likely to operate against the public interest, the FTC may authorise it.
Kenya	• Mergers and takeovers in Kenya must be consummated with the prior approval of the Minister. • The criteria for determining whether mergers and takeovers are or are not prejudicial to the interests of Kenyans include • Increased productivity, competitiveness and employment creation potential and or • Enhancement of capital intensiveness as opposed to labour intensive technology.
South Africa	• The Act provides for compulsory pre-merger notification, subject to the merger being above thresholds set in terms of the assets and/or turnover of the merging entities. • The main criterion in consideration of a merger is whether it will substantially prevent or lessen competition. • If this is the case, then technological, pro-competitive, efficiency or other public interest concerns are taken into account.
Tanzania	• Prior approval of the proposed merger transaction by the relevant Minister is required before consummation. • The Commissioner is required to carry out thorough investigation of the situation under review and following this process he makes his recommendation to the relevant Minister. • The Act provides a set of criteria for evaluation and recommendation. The Minister would normally be expected to accept the recommendation but is not obliged to do so. • The Act however, provides the right of appeal from the Minister's decision to the Competition Tribunal.
Zambia	• The law prohibits any merger or take-over without authority from the ZCC if it involves two or more independent enterprises engaged in the manufacture or distribution of substantially similar goods or providing substantially similar services. • If a merger is made in contravention of the Act, such a merger shall not have a legal effect. • However, if a merger involves entities dealing in dissimilar goods and services, an authorisation application is not required.

Appendix Table 3d: Coverage and Approach of Competition Law in 7-Up Project Countries, Unfair Trade Practices	
Country	Dealing with Unfair Trade Practices
UNCTAD Model Law	No specific suggestion
World Bank-OECD Model Law	• The distribution of false or misleading information that is capable of harming the business interests of another firm • The distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods • False or misleading comparison of goods in the process of advertising • Fraudulent use of another's trademark, firm name, or product labelling or packaging • Unauthorised receipt, use or dissemination of confidential scientific, technical, production, business, or trade information
India (MRTP, 1969)	This category was introduced by the 1984 amendment to cover activities such as misleading advertising as well as sales promotion schemes like lotteries and contests. Under the Indian law, unfair trade practices fall under the following categories: • Misleading advertisement and false representation • Bargain sale, bait and switch selling • Offering of gifts or prizes with the intention of not providing them and conducting promotional contests • Product safety standards, and • Hoarding or destruction of goods *CB 2001 does not have provisions relating to unfair trade practices. The consumer protection laws are expected to deal with them.*
Pakistan	Not explicitly included in the Act
Sri Lanka	Not included
Kenya	Not included
South Africa	Not included
Tanzania	• In addition to other unfair practices, the Fair Trade Practices Act prohibits • Misrepresentations, • misleading advertising and conduct, • bait-supply, • Harassment and coercion. • It imposes the obligation to • Label prices in shops to increase transparency and hence competition, • the need for statement and conformity with safety standards and warning requirements, • Labelling product information, product recalls requirements, imposition of standards as to quality fitness for purpose, basic warranties and indemnities and the like to prevent unfair trade practices.
Zambia	The Act provides that a person shall not: • Withhold or destroy goods or render unserviceable or destroy means of production with the aim of increasing price • Exclude liability of defective goods • In connection with the supply of goods or services, make any warranty limited to a particular area • Falsely represent about the style, model, origin, age, sponsorship, approval, performance etc. of product or service. • Misleading conduct about the nature, price, availability etc. • Supply any product that may cause injury or does not conform to standards.

Appendix Table 4a: Enforcement Structure of Competition Law in 7-Up Project Countries - Nature of the Enforcement Agency	
Country	Nature of the Enforcement Agency
UNCTAD Model Law	• No specific suggestion
World Bank OECD Model Law	• An independent and autonomous and accountable competition agency • Specialized court to hear competition cases • Competition court could adopt procedures and rules of evidence specially suited to competition cases • Composition of the court could be tailored to the requirements of competition cases.
India (MRTP, 1969)	• Under the MRTP Act, a Commission has been established (Chair- High/Supreme Court judge) • Members with capacity of dealing with problems in economics, law, commerce, accountancy ,industry, public affairs or administration • The Commission is assisted by the Director General of Investigation and Registration (DG) for carrying out investigations • Decisions of the Commission can be appealed against in the Supreme Court
India CB, 2001	• Competition Commission of India (Chairperson and 2-10 members - to be appointed by the Central government) • Special knowledge and specific experience of not less than 15 years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or any other matter which, in the opinion of the central government, be useful to the Commission • Decisions of the Commission can be appealed against in the Supreme Court
Pakistan	• The law constitutes a statutory authority, the Monopoly Control Authority to administer the law.
Sri Lanka	• The Fair Trading Commission (FTC), a body corporate with seven members appointed by the Ministry of Internal and International Commerce and Food (MIICF). • The members or the commissioners of the FTC are required to have extensive experience in the fields of Industry, Law, Trade, Commerce or Administration.
Kenya	• Provides for the appointment of the Monopolies and Prices Commissioner
South Africa	• Competition Commission with primary responsibility for determining and investigating cases under the Act, and • A Competition Tribunal to rule on most cases. • A Competition Appeal Court was also established. • These institutions were set-up during 1999.
Tanzania	• The institutional framework of the Fair Trade Practices Act consists of two levels of implementation, • The Fair Trade Practices Commission and • The Appeals Tribunal
Zambia	• The competition law in Zambia is enforced through the Zambia Competition Commission (ZCC). • The ZCC consists of 13 commissioners and two ex-officials, the Executive Director and the Secretary who constitute the Board. • One commissioner each represents the Ministries of Finance and Economic Development, and Commerce, Trade and Industry. • One representative from a statutory Government Department, the Zambia Bureau of Standards. • The rest of the commissioners (10) represent Non Governmental Organisations (NGOs).

Appendix Table 4b: Enforcement Structure of Competition Law in 7-Up Project Countries - Status, Power and the Functions of the Enforcement Agency	
Country	Status/Power/Functions of Enforcing Agency (EA)
UNCTAD Model Law	• Making inquiries and investigations, including as a result of receipt of complaints • Taking the necessary decisions, including imposition of sanctions, or recommending same to a responsible minister • Undertaking studies, publishing reports and providing information to the public • Making and issuing regulations • Assisting in the preparation, amending or review of legislation on restrictive business practices, or on related areas of regulation and competition policy • Promoting exchange of information with other states
World Bank OECD Model Law	• Independent from any government department and receives its budget and reports directly to the President/legislature of the country • The competition office shall have the right to make submissions to state administrative authorities engaged in designing or administering legislation or regulation that could affect competition in any market. When hearings are held with regard to the adoption or administrations of such laws and regulations, the competition office shall have the right to intervene in such proceedings and also the right to publish such submissions and interventions.
India (MRTP, 1969)	• MRTPC is a quasi-judicial body • The MRTP Act provides for fines and criminal penalties for violation of its provisions. • It arms the designated agency, the Director-General of Investigation and Registration, with extensive investigative powers (including suo moto powers), and provides for a quasi-judicial MRTP Commission to adjudicate.
India CB, 2001	• More or less the same as in MRTP, 1969?
Pakistan	• The authority has discretionary, recommendatory, investigative and legislative powers. • For proceeding on an enquiry, the authority has the power vested in a civil court under the Code of Civil Procedure, 1908, in respect of certain matters. The authority's main functions are • To register undertakings, individuals and agreements; • To conduct enquiries into the general economic conditions of the country, with particular reference to the concentration of economic power and the existence or growth of monopoly power and restrictive trade practices; • To conduct enquiries in individual cases, to give advice to persons or undertakings seeking such advice to determine whether or not a certain course of action was consistent with the provisions of the law.

Sri Lanka	• The FTC has the power, either on its own motion or on a complaint made by another, to investigate
	  • A monopoly situation,
	  • Merger situation or
	  • The prevalence of any anti-competitive practices.
	• FTC has the authority to review the price of any article and hold an inquiry on the price of the commodity.

Kenya	• The role of the Commission is to receive complaints and investigate them while also initiating investigations and making recommendations to the Minister on what action to be taken on possible breaches of the Act. • The Restrictive Trade Practices Tribunal established under Section 64 of the Act operates independently as the Court of first appeal and falls administratively under the Ministry of Finance and Planning.
South Africa	• The institutions are independent of Government. • The President appoints the members of the Competition Tribunal on the recommendation of the Minister of Trade and Industry. • The Competition Commissioner is appointed by the Minister (normally following a process of advertisement).
Tanzania	• The current Fair Trade Practices operation is not independent of the hierarchical structure of the parent ministry. • Trade Practices Tribunal has been established as the appellate body from decisions of the Minister and the Commissioner. • The Commissioner for Trade Practices is responsible to monitor, investigate, evaluate, prosecute, issue orders, impose penalties or otherwise resolve alleged contravention. • The Tribunal has jurisdiction to hear and determine any complaint relating to trade practice, to inquire into any matter referred to it and to issue orders. • Appeals from decisions of the Tribunal are limited to judicial review.
Zambia	• The ZCC is empowered through the Competition and Fair Trading Act of 1994 to monitor, control and prohibit acts or behaviour likely to adversely affect competition and fair-trading in the country. • Ministerial over-ride?

Appendix Table 4c: Enforcement Structure of Competition Law in 7-Up Project Countries - Sanctions and Relief	
Country	Sanctions and Relief
UNCTAD Model Law	The imposition of sanction for: • Violations of the law • Failure to comply with decisions or orders of the CA or of the appropriate judicial authority • Failure to supply information or documents required within the time limits specified • Furnishing false or misleading information Sanctions could include: • Fines (in proportion to gravity of the offence or illicit gain) • Imprisonment (major violations) • Interim orders or injunctions • Cease and desist, public disclosure or apology etc. • Divestiture or recession (M&As or restrictive contract) • Restitution to injured consumers
World Bank-OECD Model Law	• The competition office (or appropriate court or tribunal) may issue orders prohibiting firms from carrying on the anti-competitive or unfair practices, and if necessary, requiring such firms to take other specified actions to eliminate the harmful effects of such practices and to ensure against recurrence of such practices. • Fines for cartel or restrictive agreements, serious or repeated abuse of dominance, unfair competition and to ensure M&A notification compliance. • Interim injunctions whenever necessary • Parties may apply for advance ruling, which would be binding on the competition office. Advance ruling is for a limited period but can be renewed or modified or revoked under certain conditions.
India	• direction to discontinue a trade practice and not to repeat the same; • cease and desist order; • temporary injunction, restraining an errant undertaking from continuing an alleged trade practice; • compensation for loss suffered or injury sustained on account of RTP, UTP or MTP; • recommendation to the Central government, division of undertakings or severance of interconnection between undertakings, if their working is prejudicial to public interest or has led or is leading to MTP or RTP; and • To direct parties to issue corrective advertisement and to modify agreements which contain restrictive clauses.
Pakistan	• The remedies provided in the law for restrictive trade practices include orders requiring firms to discontinue such practices and affirmative actions to restore competition. • Penalties are imposed if a person or an undertaking fails to carry out the directions of the authority under the law or has willfully failed to register a registrable situation or has furnished false information to the authority. • However, the law guides the authority not to impose any penalties without giving full opportunity to the parties concerned to establish that the practices followed by them, or the ownership pattern of their firms, do not lead to infringement of the law.
Sri Lanka	• Refusal to authorize a proposed merger where it is likely to operate against the public interest; • Where the monopoly, merger or anti-competitive practice is against the public interest, • The division of any business by sale of any part of the undertaking or asset including transfer or vesting of property, rights, liabilities or obligations • The appointment of a person to conduct such activities on terms specified by the FTC; • Termination of any anti-competitive practice and • Take any other action that the FTC may consider necessary. • Penalties enforceable under the Act are extensive, but these broad powers are curtailed by the inability of the FTC to make interim, or provisional orders which bind a party to the decisions of the FTC, for alleged violations of Sections 12-14 of the FTCA. • A person who contravenes or fails to comply with any provision of the FTCA or regulation made thereunder, or an order made under Section 15 (with regard to mergers, monopolies and Anti Competitive Practices shall be liable to a fine up to LKR.5000 or imprisonment up to one year or both. • In addition, the court can order such person to refrain from carrying on the business in respect of which the order was made.
Kenya	• The Orders issued by the Minister require offenders to desist from the annulled practices and in very special circumstances, compensate the competitor for losses suffered by assisting in certain specified ways. • The compensation is not intended to be necessarily monetary. • Generally, the level of fines levied under the Act is extremely low
South Africa	• The Competition Tribunal may make an appropriate order in relation to a prohibited practice including • Interdicting any prohibited practice

	• Ordering a party to supply or distribute goods or services to another party on terms reasonably required to end a prohibited practice • Imposing an administrative penalty • Ordering divestiture, declaring conduct of a firm to be prohibited, declaring the whole or any part of an agreement to be void etc. • The Tribunal may grant an interim relief order if it is reasonable and just to do so.
Tanzania	• Sanctions/Penalties – In respect of breaches of certain RBPs the Act provides for the imposition via the courts, further compensatory relief in favour of the plaintiff and punishment of the defendant by means of fines and or imprisonment. • Certain breach situations are treated as criminal offence these appear to be the serious RBPs such as predatory trade practices and collusive tendering. Individuals can have goal sentences and fines imposed upon them by the courts on application. • An interim order may be made by the Commissioner as a result of the defendant's response and may issues a stop order on the defendant if the findings of the investigation are indicative of RTB and negotiate and further extract a consent agreement which is published in the Gazette.
Zambia	Any person who contravenes or fails to comply with any provision of the Act or any regulations under the Act, for which no penalty is provided: Omits or refuses to furnish any information or document when required by the commission or knowingly furnishes any false information to the commission Shall be guilty of an offence and shall be liable upon conviction to fine not exceeding ten million Kwacha or imprisonment for a term not exceeding five years or both.

Appendix Table 5: Infrastructure Availability at Competition Agency

Infrastructure	India	Kenya	Pakistan	South Africa	Sri Lanka	Tanzania	Zambia
Total office space (sq metre)	1300	5200	1480	-	400	-	672
No. of Phones	17	30	19	14	15	-	3
No. of fax machines	1	1	01		1	-	1
No. of internet connections	0	1	04		1	-	1
No. of computers	10	12	14	14	9	1	7
No. of printers	10	-	11	3	9	1	-
No. of photocopiers	3	1	1	1	1	-	1
Library space (sq m)	40	150	70	30	-	-	20
Library staff	3	2	3	-	-	-	1
No. of volumes	-	250	3500	-	-	-	0
No. of periodicals subscribed	21	None	5	-	4	-	16
No. of newspapers	17	1	5	3	-	-	
Domestic				2	10	-	4
Foreign	0			1	-	-	0
Arrangements for news scanning/clipping (Yes/No)	No	-	1 Scanner	Yes	No	-	Yes
Maintenance of industry data base (Yes/No)	No		Yes	Yes	Yes	-	Yes
(a) Domestic		Yes	Data base of 446 firms		Market Share database on Pharma	-	Yes
(b) Foreign/Global			None		No	-	Yes
Access to data bases of other competition agencies (Yes/No)	No	No	No	No	No	-	Yes

Appendix Table 6: Competition Agency – Staff Availability and Composition, 2000/2001							
	India	Kenya	Pakistan	South Africa	Sri Lanka	Tanzania	Zambia
A. Size							
Full time members	4	1	3	1	01	5	
Part time members	0	0	-	8	05	-	12
Professional	7	24	5		07	-	5
Support staff	85	6	25		07	-	6
Total	96	31	33	78	20		23
B. Professional Background							
B.1. Members							
Economics/Commerce/Finance	1	0	0			3	6
Law Administration	2	0			03	-	2
General Administration	3	1				-	2
MIS system	-	0	0			-	1
Others	-	0	03			-	2
B.2. Professional							
Economics/Commerce/Finance	3	22	01		05		4
Law Administration	2	1			01		1
General Administration	2	0			01		-
MIS system	-	1	01				1
Others	-	0			07		2
Support Staff							
Economics/Commerce/Finance					-		
Law Administration					-		
General Administration					-		3
MIS system					-		
Others		6			07		3
C. Employment Background of Members (Current/Past)						There is no govt. Committee yet	
Government	3	1	03		01	-	6
Judiciary	1	0	-	5	03	-	2
Business	-	0	-	3	01	-	12
Consumer groups	-	0	-	1		-	5
Other civil society organisation	-	0	-			-	12
Others	-	0	-		01	-	3

D. Functional Distribution of Staff						Not applicable	
M & As		7	-		0.25	-	1
Anti competitive practices		9	-		0.75	-	1
Unfair trade practices		2	-		0.75	-	1
Research & investigation		3	-			-	1
Finance & administration		9	-		3.75	-	1
Others		0	-		3.5	-	0
E. Procedures of Appointment						No procedure	
Members	Same as the govt.	Through the Public service commission (PSC), Advertisement	Federal Govt. Authority and Authority itself		By the Minister	-	Open advertisement and –interviewing with invited professional guest
Staff		Same as above		Advertisement & Headhunting	Commission	-	Same as above
F. Procedures of Dismissal						No procedure yet	
Members	Follows the Govt. Procedure	PSC writes the dismissal letter	Federal Government and the Authority itself has the power	-	By the Ministry as per Act	-	Disciplinary procedure is used as per staff regulation and condition of service
Staff		PSC writes the dismissal letter			By the disciplinary action, decided by the board	-	Same as above

Appendix Table 7: Competition Agency – Staff Turnover Salaries, Training and Evaluation Procedures							
	India	Kenya	Pakistan	South Africa	Sri Lanka	Tanzania	Zambia
A. Staff Turnover							
Members			-	0		-	-
Professional staff	2%	Negligible	-	-	20%	-	5%
Support staff			-	-	15%	-	5%
B. Salary Structure (Same/Higher/Lower than Government/Private Sector)							
Members	As per govt. rule	20% of private	Salaries are equilant to other govt. department, compared to private sector	Private Sector	Government	Same payable as government department	Sitting allowances only
Professional staff	As per govt. rule	20% of private		Private Sector	Lower than govt. and private sector		Competitive salaries
Support staff	As per govt. rule	25% of private		Private Sector	Lower than govt. and private sector		Yes
C. Recruitment						Not yet done	
C.1. Difficult (Yes/No)	-						
Members	-	No	Yes		No		N/A
Professional staff	-	Yes		Yes	Yes		No
Support staff	-	No			Yes		No
C.2. Reasons (Salary /Background/Qualification, etc.)							
Members	-	Salary low & it is prestigious post	Lack of financial resources and good professionals		Only appointed by govt.		N/A
Professional staff	-	Due to low salary scale		Low Salary	Salary is lower		N/A
Support staff	-	No			Salary is lower		N/A
D. Training							
Regular programmes exist (Yes/No)	No	Yes, for professionals	NO	Yes	No		Yes
Occasional programmes (Yes/No)	-			No	Yes		
Nature of programmes	-			In-House, attending courses, workshop & conferences	Inhouse/ Training institutions within the Limited area		
E. Performance Evaluation System Exists (Yes/No)	As per central government Performa	Annual appraisal done using standardized PSC staff appraisal form	Annual appraisal report	Annual appraisal report	No		

Appendix Table 8: Competition Agency – Budget & Expenditure							
	India	Kenya	Pakistan	South Africa	Sri Lanka	Tanzania	Zambia
Annual budget (2000), Local currency		K £ 896660	Rs. million 16.85	RN Million 31.390	SLR Million 7.350	TSh49.63 Million	K1.3 bn.
Annual budget (2000), US$							
As percentage of Federal Government Budget	0.00059*	0.007	0.00269	0.01397		0.00437	1.0%
Growth of annual budget 1996-2000 (%)	63	82	87	-			0.0%
Method of budget estimation	By the department of company affairs	Submission to budgetary supply department	At the level of authority	By the commissioner and the Tribunal CEO	Past year expenditure and on new proposals	Through the ministry and trade	Salaries and allowances, operating costs, planned activities
Budget approving authority	Government	Budget Committee chaired by PS	Federal Government	The Minister	The Parliament	The Ministry	Govt.
Budget managing authority	MRTPC	A/C holder is PS in ministry of Finance	Finance & Accounting section	By the com-missioner and the Tribunal CEO	Board of directors	The Ministry	Commission Secretariat, director of finance with ED
Provisions for meeting budget shortfalls	Approach department for extra funds	Carried forward	Supplementary grant given by the Federal Govt	Has not occurred	Expenditure controls according to budget	Although there is a budget there is no Cash	Request govern-ment for supple-mentary budget
Provisions for utilizing budget surpluses	Carried Forward	Rare, funds go back to exchequer	No Savings	Carried forward	Sent back to the treasury	No	Carried forward
Sources of funds (2000) Percentage share					Million	N/A	Kwacha Million
- Government grant	100	100	100		100		92
- Proceeds from fines	0	0	0		-		Nil
- Filing/Processing fees	0	0	0		-		7
Pattern of expenditure (2000), Percentage share							
- Salaries & honoraria	66	54		40	43	48	81
- Establishment cost	31	36			53		Nil
- Books, periodical etc	2.21	-		0.09	.80		Nil
- Research & investigation		-			.39		11
- Printing/publications		-		0.88	2.33		2
- Meetings/conferences	0.66	0.33		2.5	.18		6
- Any other				56			
Auditing authority (Govern-ment agency/Private body)	By Govt. body	Governments	Govt agency/ Private body	Govt agency and private body	Government agency	Government Agency	Govt agency and private body

Appendix Table 9: Competition Agency – Powers, Autonomy & Functions							
	India	Kenya	Pakistan	South Africa	Sri Lanka	Tanzania	Zambia
Status of the CA	Quasi-adjudica-tive body	Administrative body	Quasi-adjudicative body	Commission-Investigative : Tribunal-Adjudicative	Quasi-adjudicative body	Quasi-adjudicative body	Quasi-Adjudicative body
Accounta-bility	Parliament	Specific Legislation & Government Department	Independent	Parliament	Parliament/ Specific legislation	Parliament/ Specific legislation	Parliament/ Specific legislation
Powers & functions	Investigation / Prosecutorial /Adjudicative	Investigation/ Prosecutorial, Advocacy	Investigation/ Prosecutorial /Adjudicative	Investigation/ Prosecutorial /Adjudicative/Advocacy	Investigation/ Prosecutorial /Adjudicative/Advocacy	Investigation/ Prosecutorial /Adjudicative/Advocacy	Investigation/ Prosecutorial /Adjudicative/Advocacy
Keeps track of trade agreements (Yes/No)	No	No	Yes	No	Yes	No	Yes
Mandatory registration of trade agreements (Yes/No)	No	No	Yes	No	No	No	
Nature of CA decisions	Binding	Recommendation, subject to confirmation	Binding	Binding	Recommendation subject to confirmation	Binding except M&A	Binding
Final decision maker		Minister for finance			Ministry of Internal & International trade & com.	In case of M&A, the ministry	
Percentage recommendations accepted		99%					N/A

Appendix Table 10: Competition Agency – Nature of Cases and Procedures							
	India	Kenya	Pakistan	South Africa	Sri Lanka	Tanzania	Zambia
Who can complain	Individuals, Government, Consumer org., NGOs, Own	Private individuals/companies, public sector, consumer Org. NGOs own	Individual and group, public sector co.	Anybody	Private individuals, companies, Public sector, govt. & consumer Org. NGO's	Private, public, Government NGO's & Consumer org.	Private individuals, companies, Public sector, govt. & consumer org.NGO's
Do all complaints lead to investigation (Yes/No)	No	Yes	Yes	Yes	No	Yes	No
If no, criteria for pursuing complaints						-	
No. of complaints lodged (1995-2000)	3220				NA	-	172
- Rejected before investigation		A few			NA	Yes	Nil
- Taken for investigation	6926	Almost all			NA	-	172
- Rejected after investigation					NA	-	14
- Taken for adjudication		No			NA	-	118
Nature of complaints investigated (1996-2000)							
- M & As		87	65			-	48
- Anti competitive practices			597			-	65
- Unfair trade practices		33	33			-	17
- Others		0				-	6
Nature of complainants (1996-2000)							
- Competition agency		-				-	68
- Private company		-				-	69
- Public/Parastatal		-				-	0
- Consumer organisation/NGO	1201	-				-	0
- Government		-				-	02
- Private individual		-				-	33
Average time taken for investigation & adjudication (months)							
- M & As		7.19	Data not tabulated			-	4.56
- Anti competitive practices		-				-	1.59
- Unfair trade practices		2.55				-	1.21
- Others		-				-	1.20
Appeal/Review of CA's decision							
Available (Yes/No)	Yes	Yes	Yes	Yes	Yes	Yes	
Where	Supreme Court	Tribunal	High Court	Appeal Court		-	High Court
Adequacy of information					Occasionally	-	Usually
Sources of information		Interviews by MPC, & written submission	News papers, individual/ government institution	Parties and other sources	Party and outsiders, govt. sources	-	Party/government institution
Market surveys	No	Rarely	Yes	Occasionally	Yes	-	Yes
Investigation	N/A	No		Own	Own	-	Own

Appendix Table 11: Competition Agency – Outreach and Advocacy							
	India	Kenya	Pakistan	South Africa	Sri Lanka	Tanzania	Zambia
Publication of annual report (Yes/No)	Yes	Yes	Yes	Yes	Yes	No funds for this	Yes
No. of copies printed	-	200	50		550	-	Widely circulated
Press conferences organised (Yes/No)	Yes	Rarely	Yes	Yes	No	-	YES
No. organised last year		1	2	2	Nil	-	4
Issues periodical press releases (Yes/No)	No	None	Yes	Yes	Nil	-	YES
No. issued last year	-	-	2		Nil	-	24
Publications	-					-	
Educational material (Yes/No)		Yes	No	Yes	Yes	-	YES
Organisation of conferences etc (Yes/No)	No	Rarely	Yes	Yes	Yes	-	YES
Involves consumer and civil society (Yes/No)	No	No	No	Not yet	Yes	-	YES