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THE ROLE OF CONSUMERS IN PROMOTING PRO-COMPETITIVE REFORMS

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-- Session III --

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ENGAGING CIVIL SOCIETY TO PROMOTE COMPETITIVE REFORMS IN DEVELOPING COUNTRIES

-- By Mr. Pradeep S. Mehta --^(*)

1. Background

1. A recent report of the OECD 'Working Party of the Trade Committee' defines pro-competitive or competitive reforms as **'reforms that aim to increase the degree of competition in a given market'**. This report posits that although there are various policies (e.g., pertaining to infrastructural facilities and institutions) that often determine the degree of competition in the market, competitive reforms, generally speaking comprises of trade policy, investment policy and competition policy and law.¹

2. This paper distills the experience from efforts being made in various countries across Africa and Asia to catalyse competitive reforms, mainly by developing and implementing effective competition policies and/or laws (competition regime). In addition to the introduction and elucidation of a notion of an increased level of competition, competition law reforms, as envisaged in this paper encompass promoting competitive processes in the market through generation of requisite skills, awareness and training.

3. The paper emphasises, especially, the role that consumer groups/civil society organisations² (CSOs) have effectively played (and should continue to play) in the national and regional processes of developing and implementing competition regimes. It also takes into account some of the impediments that CSOs face in contributing to the evolution and effective evolution of competition regimes in these countries, and suggests certain solutions that could prove useful in overcoming these impediments. Information in this paper is collated from CUTS experience of working on competition law and policy issues through research and capacity building projects in over 20 developing countries across Asia and Africa over the last decade or so.³

4. This experience has been enriched by the publication of an almanac in 2006: "Competition Regimes Around the World—A Civil Society Report"⁴ by CUTS and International Network of Civil

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¹ OECD Working Party of the Trade Committee, 2007, "Impact of Pro-competitive reforms on trade in developing countries", OECD, Paris.

² CSOs here mean a variety of non state actors, which include consumer groups, advocacy groups and research institutions.

³ Thus far, CUTS has researched on competition policy and law issues in Bangladesh, Bhutan, Botswana, Cambodia, Ethiopia, India, Kenya, Lao PDR, Malawi, Mauritius, Mozambique, Namibia, Nepal, Pakistan, South Africa, Sri Lanka, Tanzania, Uganda, Vietnam and Zambia through a range 7Up projects (<http://cuts-ccier.org/7Up-model.htm>). This involved deep studies in partnership with local institutions.

⁴ www.competitionregimes.com

Society Organisations on Competition (INCSOC)⁵. This unique publication carries the contours of competition regimes in 117 countries of the world, and has been facilitated through voluntary contributions by civil society representatives, competition authority officials and CUTS staff. INCSOC has 120 members from 53 countries, and growing. The members are consumer and advocacy groups; research institutions and parliamentarians, including some from competition agencies.

5. This rich experience shows that there is enough evidence worldwide that has matured the understanding of ‘**why consumers need to engage on competition policy and law issues**’. However, it would be in the interest of readers the above connection needs to be highlighted in the following brief manner. There are two important considerations, especially from the perspectives of developing and least developed countries:

- Convergence between competition and consumer protection policies on the issue of protecting consumers’ interests (Box 1);
- Lack of adequate resources (financial and human resources) within the institutions mandated to implement the competition law.

6. One of the objectives of competition policy & law is to preserve the interest of consumers, and therefore there has been an increase in the extent and levels of consumers/civil society participation in shaping the national competition regimes, across the globe. Such advances were earlier mostly witnessed among the developed countries. However, in recent times they have also been encountered in the developing world.

Convergence between competition and consumer protection policies

There is a convergence between the objectives of consumer protection policy and competition policy. The main objective of competition policy and law is to preserve and promote competition as a means to ensure efficient allocation of resources in an economy, resulting in:

- the best possible choice of quality,
- the lowest possible prices, and the lowest possible prices, and
- adequate supplies to consumers.

To put it differently, ensuring competition is just a means to achieve the above-stated objectives. Obviously maximising consumer welfare, subject to the maintenance of viability of production, becomes a predominant concern. Competition policy makes markets work and protect consumers from deception. These are also the two important goals of consumer protection.

Thus, the end objectives of both the policies are essentially the same. However, competition policy is more of a proactive policy that *inter alia* attempts to promote consumer interest in the marketplace, whereas consumer protection policy puts forward mainly a reactive agenda to protect the interests of the consumers, and provide access to redressal against abuses. Of course, consumer protection policy also has some proactive elements. In this regard there is a strong complementarity between the two policies in that consumer welfare is a common goal.

Source: CUTS Viewpoint Paper on “Competition Policy and Consumer Protection Policy”
<http://www.cuts-international.org/documents/Competition%20and%20consumers%20view.doc>

7. Despite possessing institutions, not all countries are able to implement competition laws, especially in the third world on account of the fact that these institutions (mandated to implement the

⁵ www.incsoc.net

country's competition law) suffer from lack of human resources, technical skills and inadequate funding, other than political capture.⁶

2. Evolving Competition Regimes

8. Very broadly, there are three stages in the process of developing and implementing a national competition regime:

- Stage-I: Evolution of a Competition Law;
- Stage-II: Developing the conditions/environment for the implementation of the Competition Law; and
- Stage-III: Actual implementation of the Competition Law

9. A country's success in facilitating competitive reforms (as defined above), from the perspectives of competition policy and law, depends on the ease and speed with which that country is able to graduate from one stage to the next one. This, in turn, depends on specific 'steps and measures' that a country adopts to strengthen its position at every stage – in preparing to move on to the next stage.

10. The following table presents in a nutshell, several such 'steps and measures' that have been witnessed in developing and least developed countries where CUTS has been engaged in studying their competition regimes.⁷

Table 1: 'Steps and measures' to strengthen competition regimes in a cross section of developing and least developed countries

STAGES	Description	Steps and Measures
STAGE – I	Evolution of a Competition Law	<ul style="list-style-type: none"> • Adopting a well-planned, long-term process for developing the competition law of the country, involving research undertaken by research institutions • Institutionalising a process with clear policy directives for developing a competition law with the engagement of various stakeholders. • Integrating the dimension of 'public consultation' - including consultations with consumers and their representatives for developing and finalising the competition law

⁶ CUTS, 2007, "Constraints faced by Competition and Regulatory Agencies", Jaipur. (Policy Brief that collates findings of research done on this subject under the 'Competition, Regulation and Development Research Forum' hosted by CUTS at New Delhi, in March 2007.

⁷ Compiled from CUTS experience of working on competition policy issues in various African and Asian countries.

<p style="text-align: center;">Stage – II</p>	<p>Developing the conditions/ environment for the implementation of the Competition Law</p>	<ul style="list-style-type: none"> • Sensitisation of multiple stakeholders including educating the civil society and consumers • Including ‘Competition Policy and Law’ within the academic curricula of national universities • Building a cadre of researchers on competition policy and law issues by motivating national research institutions to undertake research on relevant aspects of competition policy and law • Strengthening the competition agency structurally and functionally (institutional development, proper resource allocation, skilled staff, coordination with other institutions, clarity of mandate, etc.) • Developing clear ‘Regulations’ to facilitate the implementation process
<p style="text-align: center;">STAGE – III</p>	<p>Actual implementation of the Competition Law</p>	<ul style="list-style-type: none"> • Training the staff of the competition agencies (through internships at experienced competition authorities; providing on-job training; organising training programmes; etc.) • Engaging experts/practitioners for helping the staff of young competition authorities in dealing with cases/issues like they face on a day-to-day basis • CSOs working as Allies and complementing the efforts of the competition authorities

11. The table reveals that in addition to the engagement of the civil society/consumers in the process of actual implementation of the competition law as allies etc., steps have also been taken in many poor countries to engage consumers/civil society more intensively in the process of evolving and shaping the competition law. This is indeed a tribute to the prominence that civil society organisations have gained in the developing world on economic governance issues; and the realisation among policymakers of the need to engage the civil society right from the beginning for shaping important public policy issues like competition policy and law.

3. Civil Society participation at various stages

12. In this section we consider specific instances gathered from CUTS experience in undertaking competition policy research and advocacy projects in developing countries, pertaining to **civil society participation at various stages** in the process of strengthening competition regimes. These are extracted from the Table 1, above, and are as follows:

- Adopting a well-planned, long-term process for developing the competition law, involving research undertaken by a research institution (Long-term planning and vision);
- Institutionalising a process with clear policy directives for developing a competition policy/law with the engagement of various experts (Policy Directives for stakeholders engagement);

- Integrating the dimension of ‘public consultation’ in developing and finalising the law;
- Sensitisation of multiple stakeholders of the need for a functional competition regime, to garner wider public support for competition reforms;
- Integrating ‘Competition Law & Policy’ within the academic curricula of Universities (academic programmes on competition policy);
- Motivating research on competition issues;
- Engaging consumer groups/civil society organisations as allies and watchdogs.

3.1 Long-term planning and envisioning

13. Evolution of a competition regime in many developing and least developed countries of Asia and Africa has been as a result of pressure from the outside – being a part of multilateral or bilateral commitment of the national government. There are a very few governments in the developing world that have embarked on a structured, long term process for developing the national competition regime as a need of the prevailing economic situation in the country and/or region. **Botswana** is one such rare country in the developing world.

14. The Botswana government envisaged a long-term plan to develop the competition regime in the country. A plan that comprised of the following:

- An economic mapping exercise (to make a baseline assessment of the state of the Botswana economy);
- A legal inventorisation (to analyse how developing a competition policy would impinge upon various existing policies in the country);
- Developing the Competition Policy of Botswana;
- Finally, developing the ‘Draft’ Competition Law of Botswana.

15. The Botswana Institute for Development Policy Analysis (BIDPA), a Gaborone-based research institution and CUTS partner was appointed to help the government in undertaking the economic mapping study and the inventorisation. Both these assignments helped BIDPA in developing understanding on competition issues in the country, which has since been a pioneer research institution on competition policy and law issues in the country.⁸

16. As a result of Botswana’s experience, **Mozambique** also decided to formulate a competition policy before developing a competition law. Following CUTS advocacy, **India** too has launched discussions on adopting a national competition policy and doing competition assessment on the lines of the Australian experience.

⁸ BIDPA was CUTS research partner in Botswana for the project, “Capacity Building on Competition Issues in Select Countries of Eastern and Southern Africa”, referred to as the 7Up3 project (www.cuts-international.org/7up3.htm)

3.2 *Policy directives for stakeholder engagement*

17. One of the primary conditions to enable civil society participation in shaping national competition regimes, is the willingness within the government ministries and policymakers to engage civil society actors in this process. Among many of the countries that CUTS have worked in, the participation of the civil society in developing the competition policy/law of the country has been seen to be driven by a clear policy directive of the government.

18. For instance, in **Mozambique**, the government established a ‘Working Group on Competition Policy’, comprising of 20 odd members that included representatives from consumer organisations and civil society organisations. This group has been working very closely with the Ministry of Industry and Commerce of Mozambique in developing the competition law and policy of the country.

19. A similar approach has been witnessed in **India**, where a new competition law was adopted in 2002 after research-based advocacy lead by CUTS, in structured consultations with the Finance Minister. Furthermore, India would soon adopt a National Competition Policy following a similar advocacy by CUTS. The Planning Commission has recognised the need in the 11th Plan Policy Document which has just been finalised, though yet to be made public. The recommendations have been distilled in the Policy Documentation and thus set in motion a process for adoption of a National Competition Policy. The Policy is beyond a competition law, to be used as guidelines by the Government to deal with policy-induced hurdles to a competitive economy, where the law will not be able to bite.

20. In many countries, it is being increasingly witnessed that the public/civil society is provided an opportunity to provide comments on the draft competition legislation. This is a healthy trend.

3.3 *Multi-stakeholder engagement*

21. It is CUTS’ mission to promote a healthy competition culture across the world, and especially in the developing countries of Africa and Asia. INCSOC⁹ is another medium to create greater awareness in countries among key stakeholders where there is no competition law or one which is yet to be implemented effectively. CUTS is also working with Consumers International in this area.

22. A methodology that CUTS has institutionalised with support from international development partners is to embark on a research-based advocacy and capacity building process for developing understanding among national stakeholders of the need for an effective competition policy. One of the key elements of this methodology has been the identification of a core group of stakeholders (defined as the ‘National Reference Group’), who are able to act as a platform to analyse and debate issues, and as the medium for promoting the need for effective competition regimes within their own networks and connections in the project countries – often as a strategy to promote economic growth, reduce poverty and protect the interest of the consumers.

23. This methodology referred to as the *7Up* approach¹⁰ has been successfully applied in 19 countries across Africa and Asia to develop national constituencies on competition policy and law issues. Pursuing this, CUTS has plans of applying the *7Up* approach *inter alia* in six more countries of West Africa over the next couple of years.

24. This approach has very broadly demonstrated two significant results:

⁹ Ibid

¹⁰ Refer www.cuts-ccier.org, for further details on the *7Up* approach and check the *7Up2* and *7Up3* project webpages.

- National government/departments (in charge of competition) have developed confidence in the ability of the civil society groups (including consumer organisations) to contribute meaningfully in the process of developing and implementing national competition regimes;
- Helped sensitise the international development community of the need to look at competition as an integral component of national (public) policies that help reduce poverty in the developing world¹¹.

3.5 *Academic programmes on competition law*

25. One approach that seems to have caught the attention of the national planners (as a result of persuasion by the international development community) is for having courses on competition policy and law introduced in the national universities. This, in addition to developing capacity among the faculties who teach the course – would also help train young professionals on the basic aspects of competition policy and law issues.

26. A Masters course on “Competition Policy and Regulatory Economics” has been started in the Addis Ababa University in **Ethiopia** 3 years ago. There are plans to initiate a similar programme in the national universities of **Vietnam** as an outcome of a project that CUTS would be undertaking in partnership with the Vietnam Competition Administration Department (VCAD)¹², starting later this year. In **India** too, universities are now looking seriously at introducing competition law and economics courses.

27. CUTS itself has just launched the CUTS Institute for Competition & Regulation¹³ to provide research-based capacity building solutions to the economic policy community in Asia and Africa. One path breaking project it is currently engaged in is to analyse why competition and regulatory laws are not implemented properly in the developing world.

3.6 *Motivating research on competition*

28. The case of the government of **Botswana** appointing BIDPA to develop the baseline information on competition related issues in the country and also develop an inventory of national laws and policies to be affected by the planned competition policy, is a very useful example of measures being taken by governments to develop research capacity at the national level on competition policy and law issues.

29. A similar example exists in the case of **India**, where with support of the DFID, UK and the FIAS (of the World Bank group), the Competition Commission of India (CCI) invites research and academic institutions to do research on competition related issues. This project was catalysed by an earlier project¹⁴ done by CUTS in 2005 with the support of DFID, UK. The CCI exercise is an annual call for research, which is presently in its second year. It has indeed helped the competition agency to acquire knowledge in specific sectors, which will help it in its operational role as both an enforcement agency and in its advocacy

¹¹ The *7Up approach* has been prescribed by the OECD Development Assistance Committee, as an effective model for donors to consider, while supporting work on competition policy and law issues in the developing world. (please refer OECD Development Assistance Committee, ‘Draft policy guidance for donors on removing barriers to formality and on competition policy’, April 2005).

¹² CUTS would be implementing a project in partnership with VCAD, Vietnam with support from the Swiss Competition Authority which includes developing academic modules in national universities of Vietnam on competition policy issues.

¹³ www.circ.in

¹⁴ “Towards a Functional Competition Policy for India” (2005), CUTS and Academic Foundation

functions. The icing on the cake is the generation of capacity in the research community, which was otherwise absent.

3.7 Consumers as Allies

30. Competition agencies in developing countries have limitations pertaining to resources (human and financial resources) that hinder their ability to effectively implement their laws. Increasingly, developing country governments and competition agencies have started to develop synergies with consumer groups and research institutions in their jurisdictions to be able to assist in enforcement. For example, our partner in **Sri Lanka**: Institute for Policy Studies was once called upon by the Fair Trade Commission to assist them in analysing a complex pharma merger case.

31. Competition laws in many developing countries, like **Tanzania** envisage a formal relationship with consumer organisations in order to be able to better implement the law. In **Zambia**, the Commission is required to have a consumer representative on its board. This practice also exists in other countries, such as Poland, Georgia, Latvia, Egypt and Jordan. The approach of a pro-active civil society engagement in implementing the competition law, though not as formal, as in cases mentioned before, has also been adopted in other countries like **Vietnam, Kenya, and Mauritius**.

4. Impediments in civil society engagement

32. We have had a mixed experience of working with consumer and civil society organisations. In some countries they are quite active, while in others they do not even exist. Certain inherent weaknesses have been witnessed in the working of CSOs by CUTS over a long period of implementation of competition and consumer protection related projects, which are summarised below. These weaknesses often retard the effectiveness of civil society/consumer actions; and thus illustrate that it is sometimes unreasonable to expect that engagement of civil society in an initiative would always result in progressive changes.

4.1 Lack of continuity

33. Namibia Consumer Lobby (NCL) was the only consumer organisation that was active in **Namibia** for some years, but then due to various reasons this organisation was not seen to be much active after 2005-06. This was the time that CUTS was also looking for an organisation that could carry out advocacy activities in the country, under the 7Up3 project (www.cuts-international.org/7up3.htm). After having tried with various organisations, CUTS realised that there were no active consumer groups in the country. For a little over the last one year or so, the Namibia Consumer Association (NCA) has come to the fore in Namibia, and has been contributing regularly to the press on competition policy issues. There is a possibility, however, that this organisation might also wither away with time, if the people involved in it are not able to develop the organisation strategically through a long-term planning process. This would require: (i) garnering resources (financial and human) for the functioning of this organisation; (ii) developing the capacity of the representatives of NCA; and (iii) a commitment to continuous engagement.

34. CUTS has been striving constantly to develop the capacity of the representatives of NCA, among other similar organisations, on competition issues, by inviting them to regional conferences and trainings on competition issues, but a marked improvement in the capability of the organisation can only be facilitated through a process of continuous engagement.

4.2 Contradictions and differences

35. While in a country like Namibia, the problem is of not having a civil society/consumer organisation that is attuned to working on competition policy and law issues, especially from the

perspective of consumer welfare, the situation is totally opposite in a country like India. In **India and similar countries**, due to the fact that there are many civil society organisations/consumer groups working on these issues, there is often some difference of opinions among them. One organisation is also seen to undermine the other – and it often becomes difficult to form a consensus on a specific issue. In many countries, including India, the civil society views a competition law as a market access agenda by rich countries or a part of a neo liberal agenda, hence there is the issue of credibility and wider acceptance. In one case, since a workshop organised by a respectable research institution in **Thailand** was supported by the World Bank, many CSOs boycotted the same. In some other cases, such as in **Malaysia** and **Bangladesh**, there is an opposition to adopting a competition law by both state and non-state actors since competition policy is no longer on the WTO Doha Round agenda. Both these countries do not have a competition law, though it is being discussed currently.

4.3 *Ill-developed concept of civil society*

36. It was witnessed in **Vietnam, Lao PDR and Cambodia**¹⁵ that the concept of civil society itself was very new and rudimentary in nature. So, it was quite difficult in these countries to find a civil society organization – let alone one that could comment on government policies and sensitise policymakers/bureaucrats. The government has traditionally been considered to be the sovereign provider of basic goods and services; and therefore society had not felt the urge to stimulate coalition(s) that could advocate for change in the way the citizens are governed. Among these three countries the concept of civil society was somewhat better understood in Vietnam. It is important to note that both Vietnam and Laos are communist regimes, while Cambodia is not.

4. Conclusion

37. Experience collated from the developing world (of Africa and Asia) indicate various dimensions for engaging civil society at each stage of evolution and implementation of the national competition regime.

38. Civil society participation in evolving and implementing competition regimes has helped in developing public opinion in favour of the need for an effective competition law in developing countries – as a means to promote economic democracy and good governance, aid economic growth, reduce poverty and promote and protect the consumer interest.

39. For enabling and ensuring civil society participation in the process of evolving and implementing effective competition regimes in developing countries, the following conditions appear to be necessary:

- A strong will, commitment and vision within the government circles (department, agencies, etc.) to engage the civil society/consumers organisations pro-actively at various stages (evolution, groundwork and implementation) of developing and implementing national competition regimes;
- Internal capacity among civil society organisations/consumer groups on competition policy issues – especially an understanding of how an effective competition regime can promote economic democracy and good governance, protect consumer interest and aid poverty eradication efforts in the developing world;
- Ability in the CSOs to sensitise other national stakeholders of the need to implement *effective* competition regimes and the benefits that would accrue from the same;

¹⁵ Countries covered under the 7Up2 project of CUTS (project entitled, “*Advocacy and Capacity Building on Competition Policy and Law in Asia*”, <http://www.cuts-international.org/7up2-overview.htm>)

- Ability among civil society organisations of identifying anti-competitive practices and reporting their occurrences to the relevant authority;
- Commitment in the international development community to promote civil society participation in evolving competitive markets in the developing world by providing resources and acting as peer groups to persuade laggard countries to enable civil society to be established and flourish.

40. It is however sometimes quite challenging to meet these conditions. Some approaches (collated from CUTS rich and varied work on competition issues) that could prove beneficial in addressing them are enumerated here:

- Identifying allies in the government dedicated to the cause of implementing competition policy and law in developing countries, could prove to be a beneficial approach for consumer organisations/civil society committed to ensuring effective implementation of national competition regimes. One of the strategies often adopted by CUTS in India has been to identify senior parliamentarians and government officials with a basic understanding of competition issues and sensitising them of the need for promoting competitive markets in the country as a means to promoting the consumer interest etc.
- Explain the linkages between competition and economic development in developing countries in simple language, through reader-friendly publications. Similarly, the linkage between competition policy & law and consumer protection could be elucidated.
- Declare and observe a World Competition Day to draw the attention of the wider community on competition issues, somewhat like the World Consumer Rights Day or National Competition Days observed in several countries
- Attract the attention of the international development community to support work on competition policy & law issues (being a part of their work on economic/public policies in the countries of their interest).
- Establishment of an 'International Competition Fund' to be housed in an intergovernmental organisation, such as the World Bank, financed by penalties imposed on companies engaged in international cartels that victimise consumers across the globe, to be used to assist CSOs in developing countries to pursue competition reforms. CUTS has been campaigning for this fund, to be a useful resource for organisations wanting to undertake projects on competition issues in the developing world.¹⁶

41. National governments, intergovernmental organisations, international organisations specialising on competition policy & law issues and the international development community should combine their energies to ensure engagement of civil society organisations/consumer organisations in the various stages of evolving and implementing national competition laws in the developing world – in order to promote economic democracy and good governance, protect the consumer interest and aid efforts to eradicate poverty.

¹⁶ Mehta, Pradeep S, '*Airline Cartel fines could be better used*', Financial Times, London, 16th October 2007.