

Advocacy and Capacity Building on Competition Policy and Law in Asia (7-Up2 Project)

C-CIER
ACTIVITIES



CUTS Centre for Competition, Investment and Economic Regulation (CUTS C-CIER) endeavours to accelerate the process towards a functional competition policy in Bangladesh, India and Nepal in South Asia and Cambodia, Lao PDR and Vietnam in Southeast Asia through the 7-Up2 Project, and advance an enabling environment for the policy and law to be better enforced.

In **Cambodia**, it was found from the field surveys undertaken as an inherent part of 7-Up2 project implementation process, that the biggest impediment to market participation, entrepreneurial growth and fair competition is public administrators' corruptive and rent-seeking behaviours.

This is one of the focal points analysed by the Country Report that our project partner, the Cambodia Legal Resource Development Center (CLRDC), is finalising and is expected to come out by end January. In its continued dedication to project implementation, CLRDC has also been contributing substantially to the Government-led programme of drafting a competition legislation for the country, with a view to fulfilling Cambodia's accession commitments to the World Trade Organisation.

The Prime Minister's Decree on Trade Competition N° 15/ PMO dated 4 February 2004 is to be in effect in **Lao PDR** from August 2004. However, so far the Government of Lao (GOL) has not been able to set up the Trade Competition Commission, the enforcement authority under the Decree, yet. Besides, the GOL recognised that the level of awareness among relevant national stakeholders including the government official in this field to be extremely limited, and needed to be improved before the Decree can really come into life.

This is in line with findings of the perception survey undertaken in Lao PDR by the National Economic Research Institute (NERI), the country project partner, which highlights the prevalence of anti-competitive practices in the country; the limited level of awareness on competition related issues including that in the government circle; and the dearth of technical expertise on the subject. The 'Country Report' currently being prepared by NERI will be the first of its type to give a comprehensive account with field assessment of the competition scenario in Lao PDR, thereby helping the national stakeholders to find their way for implementing the said Decree.

The project partner in **Vietnam**, the Central Institute for Economic Management (CIEM), has also completed the questionnaire-based perception survey, which revealed several anticompetitive practices, as well as some policy-induced barriers to market participation and competition facing the Vietnam business community. Interviews with consumers showed that the prices of some goods in the country were perceived to be exceedingly high; that the consumers also faced with the problem of counterfeit goods dominating the market; and that there was a felt need to

empower the consumer associations in the country, as an integral part for evolving a competition and consumer protection regime in Vietnam.

The Country Report being finalised by CIEM is expected to be a basis for discussion in the upcoming national stakeholder meeting to be jointly organised in February 2005 by CIEM, VINASTAS-the Vietnam Standards and Consumers Association, our country advocacy partner, and the Competition Administration Department-the enforcement authority under the newly-adopted Competition Law of Vietnam.

Substantial progress have been made by the South Asia Watch on International Trade Economics and Environment (SAWTEE), project partner in **Nepal**, who are simultaneously involved in advocacy activities, especially intended at raising the level of awareness of the various stakeholders especially the consumers on competition policy.

It emerged from the surveys undertaken by SAWTEE that anticompetitive practices are prevalent in almost all major industries in Nepal. The lack of a comprehensive competition law has allowed businesses to engage in anticompetitive practices by exploiting the existing loopholes in sectoral legislations. Besides, the high capital requirement for starting businesses constitutes a formidable entry barrier for small and medium-sized firms that could potentially challenge monopoly enterprises. Nonetheless, given the weak checks and balances in public institutions, the government apparatus remains hostage to active lobbying from interest groups that are often aligned to political parties. This, together with other inefficiencies of regulating agencies, such as lack of incentives to perform, apathy etc, results in rent-seeking behaviour and corruption.

Finally, an overall lack of consumer awareness on the need for a participatory approach to eliminating such practices as well as the inability of the consumers, to form alliances around a common theme and voice their collective concerns has aided the continuation of anti-competitive practices. The Nepal Country Report is being accordingly finalised.

Bangladesh Enterprise Institute (BEI), project country partner in **Bangladesh**, is currently administering the questionnaire surveys, and putting all efforts to come out with the Draft Country Report by January end, in order to catch up with other project countries.

Bill Blow-up on the Vietnam Competition Bill 2004

Apart from research, advocacy has also been simultaneously undertaken in the first phase in all project countries. Dialogues with policy-makers, regulators, the academia and consumer associations have been a focus during regular visits paid by the Project Coordination and Management Unit (PCMU) to both regions. An encouraging success was achieved in Vietnam, which is the focus of activities in the Mekong region.

In response to the Draft Competition Law, 2004 that was set for discussion in the National Assembly of Vietnam (NA) in November 2004, the PCMU prepared a commentary on the same in Vietnamese language, entitled Bill Blow-up, before the start of the NA working session and widely circulated the same.

The Bill Blow-up can be found in the *Advocacy* section of the project webpage at www.cuts-international.org/7up2.htm.

The Bill Blow-up was sent to all members of the Vietnam National Reference Group (NRG)¹, who in turn forwarded the same to other relevant people/organisations in the country.

Some of the feedbacks received so far on the Bill Blow-up:

- Mr. Le Dang Doanh, Senior Economist, Advisor to the Minister of Planning and Investment of Vietnam, author of several sectoral competition studies undertaken for the United Nations Conference for Trade and Development (UNCTAD) and the United Nations Development Programme (UNDP), highly complimented the efforts by the PCMU. He forwarded the Bill Blow-up to several NA deputies, who agreed that the comments in the Bill Blow-up should be suitably incorporated before the Draft Law could be passed².

- The Centre for Information, Library and Research Services (CILRS)-the research and information centre of the Office of the National Assembly (ONA) of Vietnam has acknowledged the project's contribution to the debate over the competition legislation, by informing that the Bill Blow-up was found to be very interesting and relevant for the discussions. The Centre has also expressed its interest to send the Comprehensive Enterprise Bill of Vietnam, and other economic policy documents to CUTS C-CIER for further comments and contributions.
- Many NA deputies later sent letters to CILRS acknowledging that the inputs provided in the Bill Blow-up etc. helped them a great deal to participate in and contribute to the discussions thereby.
- VINASTAS, project advocacy partner in Vietnam, forwarded the Bill Blow-up to the expert panels at the Competition Administration Department in the Ministry of Trade of Vietnam. The PCMU was later informed that the views conveyed through the document were appreciated and acknowledged by the Department, which has also expressed interest to invite further support and cooperation in drafting implementation guidelines for the Law, as well as in subsequent advocacy and training activities of the project.

1 The NRG is a group of people representing various stakeholder groups in each of the project countries, who are associated to ensure that the activities and findings of the project are circulated to a wide audience. The members of the NRG constituted in each of the project countries are important people representing CSOs, Research Institutions, Academia, Chambers of Commerce, Competition Authorities (wherever existent), Trade departments (internal and external), Regulatory Authorities, Media and Donors

2 The Government of Vietnam is expected to make the Competition Act 2004 of Vietnam public in end-January 2005. It remains to be seen if modifications are made to the Act in line with CUTS C-CIER's suggestions.

Towards a Functional Competition Policy for India (FunComp Project)

CUTS C-CIER is implementing a project 'Towards a Functional Competition Policy for India' (FunComp Project) as the India component of the 7-Up2 Project.

CUTS C-CIER has engaged in the project, to evolve a better understanding of the competition scenario in India and, help the government to integrate a functional competition policy, assist the competition authority set priorities, and sensitise other stakeholders involved, to understand the situation and make appropriate interventions.

The outcome of the project is a report entitled 'Towards a functional competition policy for India', covering various issues affecting competition in the marketplace. Various Indian experts (economists, legal researchers and practitioners) have been writing the individual chapters of this report.

CUTS C-CIER organised a two-day project review meeting on 30th-31st October 2004 in Jaipur to discuss the individual chapters of the report. The writers of the individual chapters presented their research findings incorporated in the chapters, which constitute the FunComp Project Report. The chapters were discussed and deliberated upon in details through presentations by

the contributors. Over the discourse, the writers received suggestions and comments on their chapters for integration from the august gathering of experts and practitioners.

Through discussions in the concluding session, the overall structure of the FunComp Project Report was also finalised.

The detailed proceedings of the meeting is available in the CUTS website at www.cuts-international.org/funcomp.htm. Comments received from the various participants over the presentation of each and every chapter have been documented in the proceedings, to provide the writers with the required lead to finalise their respective chapters.

The project report would be released in a two-day international conference: 'Moving the Competition Policy Agenda in India' to be held in New Delhi on 31st January-1st February 2005. The conference would draw participants from both developed and developing countries (especially from Asia and Africa), and offer them an opportunity to discuss the issue in general, and develop a framework for moving the competition policy agenda in India.

As a part of its commitment to promote a healthy competition culture in India, CUTS C-CIER has been organising events and engaging in advocacy activities, which would be continued over the period of implementation of the 7-Up2 project and outside it.

Events

Seminar on 'Functional Competition Policy for India', Hyderabad, 5th October, 2004

The seminar brought national and international experts on competition to facilitate discussions on various components of competition policy in India, from evolution to its current scenario.

The first part of the seminar dealt with international experience on competition policy and lessons for India. The second part discussed national and sub-national experiences from India, primarily in the light of the findings from CUTS C-CIER's FunComp Project. The discourse in the interactive session focused on the evolution of competition policy and law in India, and the need to explore the interface between competition and regulation in the country.

Consumer Friendly Cable T.V. system', one-day seminar, New Delhi, 18th October, 2004

Freedom of choice for Indian consumers in access to satellite channels remains a contentious issue in the Cable T.V. segment in the country. CUTS C-CIER had undertaken a project comprising of research and field surveys in New Delhi, Kolkata, Chennai and Bombay, primarily aimed to assess consumer grievances regarding Cable services, particularly in the wake of absence of appropriate regulatory framework in cable services.



stakeholders in New Delhi. The meeting provided a platform for the involved quarters to air their views on the topic, and frame recommendations for integration in the project report for submission to the Government.

A report detailing the findings of the study is available at www.cuts-international.org/ConsumerFriendlyCableTVSystem-SurveyResults.htm

In order to discuss the findings from the project, and to sensitise policy-makers and cable operators on consumer interest issues, CUTS C-CIER organised an interface between these

Advocacy

On 4th November 2004, Telecom Regulatory Authority of India (TRAI) recommended to the Government to allow it to have a part of the annual licence fee paid by the telecom service providers and cable operators to the Government.

CUTS C-CIER in a letter to the Planning Commission of India and the Department of Telecom (Government of India) has asserted that the consumer movement in India needs to be resourced and strengthened to ensure the sustainability and effectiveness of the regulatory framework, specifically in telecom and other sectors. CUTS has suggested that TRAI's request should be considered in parallel with the Fund to be used for supporting consumer advocacy also.

This is particularly imperative on account of the little attention *consumer education* has received in our country.

CUTS has approached the government with an appeal to frame a Telemarketing Law for the country: This legislation has become necessary in India, specially now,

with a score of service providers in the mobile telephone sector resorting to carrying out customer surveys over mobile phones in order to market products and services; and unnecessarily annoying customers.

CUTS intervention in the Competition Commission of India appointment case: CUTS C-CIER has been engaged as 'intervener' in a case, challenging the appointment of a bureaucrat to head the Competition Commission of India, created under the provisions of the Competition Act of India 2002. CUTS C-CIER had submitted its recommendations to the Honourable Supreme Court of India, to bring in amendments to the Act. Most of the recommendations made by CUTS C-CIER were in consonance with the modifications to the Act subsequently suggested by the Indian Government, including the appointment of an expert to head the Commission. The Honourable Court is expected to deliver its verdict on the case soon.

Media Outreach

In view of the low-level of awareness in various quarters, including the government machinery on competition policy and law and regulation, CUTS C-CIER has been contributing articles in popular economic dailies of the country on a regular basis. The following are some of the articles on the topic that featured in leading business newspapers of the country.

- CUTS C-CIER has expressed its views on the Unified Licensing Regime proposed by the Telecom Regulatory Authority of India in an article published in *The Hindu Business Line* on November 18th, 2004.
- An article on '*Competition, regulation in TV channels distribution*' was published in *The Hindu Business Line* on November 6, 2004. The article elaborates Telecom Regulatory Authority of India's (TRAI) recommendation that every broadcaster shall provide signals of its TV channels on a non-discriminatory basis to all distributors of TV channels and no exclusivity would be permitted between broadcasters and distributors of TV channels.

Drawing experiences from other countries, the article highlights how the non-discriminatory access could stimulate competition and improve the content.

- Two articles on competition related issues in India, written by Pradeep S Mehta, Secretary General of CUTS International were published in *The Economic Times* newspaper in the month of November 2004.

The first of the two articles, 'Escape from unholy brotherhood' (November 15, 2004) elucidated the interface between competition and sectoral regulation, in the light of the initial findings that had emerged in the course of the detailed assessment of the competition regime in the country done under the FunComp Project. The second article 'Competitiveness via Competition' illustrated that an effective competition law not only promotes consumer welfare, but also business welfare, by reinforcing better competitiveness in business houses.

All these articles and more are available in the CUTS website at: www.cuts-international.org/articles2004.htm

Global Vitamins Cartel Case.....

Over the period between 1989-99, manufacturers of vitamins representing 8 developed countries were involved in a cartel, and had jacked up prices of vitamins throughout the globe. Subsequently, the anti-competitive practices of the companies were revealed, and the companies were penalised with humongous fines in

various countries. Unfortunately, the Indian government had not made any public statement about its investigations (if any) on the impact of the global vitamin cartel in the country. CUTS C-CIER has done some research on the topic, and is raising the issue with the government.

Citizen's Report on the State of Competition Law in the World (CiRComp)

The International Network of Civil Society Organisations on Competition (INCSOC, www.incsoc.net) is a unique initiative of CUTS C-CIER aimed to build a dynamic coalition of organisations working on competition and regulation issues throughout the world.

Members of INCSOC, representing civil society organisations from 53 countries, were engaged to contribute brief (4-5 page) country papers elucidating the competition scenario of their respective countries. Some experts were also requested to

contribute country papers. CUTS C-CIER intends to publish these country papers in a voluminous compilation: 'Citizen's report on the state of competition law in the world (CiRComp)' by March 2005.



The report would consist of an introductory chapter detailing the evolution of competition policy and law in the world; chapters dedicated to the competition regime of various countries of the world (segregated into three categories: those with a law, without a law and in the process of enacting a law); an assessment of existing and proposed frameworks of regional and other international arrangements on competition policy; and a concluding chapter enumerating suggestions from the civil society's perspective to strengthen competition regime around the world.

The aim is to cover about 100 countries in this report. Fairly good progress has been made so far. About 70 papers have been received till end November 2004, and the rest of the papers are currently being finalised by the contributors.

Representation

Competition Policy, Development and the Multilateral Trading System

Pradeep S Mehta and Manish Agarwal, Policy Analyst at the CUTS Centre for Competition, Investment & Economic Regulation (CUTS C-CIER) participated in a three day Regional Seminar on Asia and Pacific Economies with the title, 'Competition Policy, Development and the Multilateral Trading System' over 6-8 October.

The seminar was jointly organised by the World Trade Organisation Secretariat, Administrative Staff College of India and the United Nations Economic and Social Commission for Asia and the Pacific, in Hyderabad. The seminar focused on specific themes of trade and competition policy. Mr. Mehta made two presentations: 'Competition Policy and restructuring in Asian Developing Countries' and 'Status of Competition Law and their implementation in the Asia Pacific Region' highlighting issues for immediate attention, based on CUTS experience.

WTO Negotiations: India's Post-Cancun Concerns

The Planning Commission of India and the International Trade and Development Division of the School of International Studies, Jawaharlal Nehru

University, New Delhi had organised a three-day seminar on 'WTO Negotiations: India's Post-Cancun Concerns' in New Delhi from 18-20 October 2004.

The seminar was segregated into five sessions pertaining to: market access and negotiating strategies; agriculture; industry and competition; standards and other contemporary issues relevant to the WTO. Pradeep S Mehta participated in the seminar and presented a paper on 'Multi-lateral Competition Framework – in need of a fresh approach', which was based on research undertaken earlier by CUTS C-CIER.

Intergovernmental Group of Experts (IGE) on Competition Law and Policy, UNCTAD

Alice Pham, Researcher at the CUTS C-CIER represented CUTS at the Intergovernmental Group of Experts (IGE) meeting on Competition Law and Policy of the United Nations Commission on Trade and Development (UNCTAD) held at Geneva from 8-10 November. She presented CUTS approach and initiatives on competition policy and law in developing countries in the *Advocacy Session* of the meeting.

Ms. Pham also made a formal statement that civil society and non-governmental organisations be given the opportunity to cooperate in organising preparatory regional seminars prior to UNCTAD's Fifth Review Conference, and invited to participate in the Conference as well.