

C-CIER ACTIVITIES REPORT



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



Assessing the Progress Achieved and Finding the Way Forward

A two year multi-country project on competition policy and law is being implemented by CUTS Centre for Competition Investment & Economic Regulation (CUTS-C-CIER) in six countries in Asia: Bangladesh, India and Nepal in South Asia; and Cambodia, Lao PDR and Vietnam in Southeast Asia, since May 2004. Having reached halfway through the project implementation schedule, it was time to assess the extent to which the project was able to achieve the goals it had set out to accomplish, to identify bottlenecks, and to chalk out a future plan of action.

The project coordination and management unit (PCMU) at CUTS, decided to organise a *project review meeting* on August 16-17, 2005 in Hanoi, Vietnam. In addition to evaluating the project progress, the country research documents prepared by the partner organisations also needed to be reviewed.



Project Inerim Meeting

The 7Up2 project review meeting on August 16-17, 2005 was inaugurated by the Vietnamese Vice Minister of Trade, Le Danh Vinh. Experts from all over the world, including representatives of the project donors – the State Secretariat for Economic Affairs, Switzerland (SECO), Swiss Competition Commission (COMCO) and the Department for International Development (DFID) participated in this two-day review meeting and contributed substantially to the discourse.

Among the prominent experts were Frederic Jenny, competition practitioner a sitting Judge in the French Supreme Court and Prof. William Kovacic, and professor at the George Washington University, US. George Lipimile, Chief of the Zambian Competition Authority and several other researchers and practitioners from Asia and Africa were present. Deliberations over the two days of the meeting were extremely fruitful, especially in:

- providing valuable comments/suggestions on the research findings to the partner organisations on the status of competition in their respective countries
- offering a clear understanding of activities that the partner organisations need to initiate in the subsequent phase of the project

M&A Investigation Workshop

Concomitant to the mandate of the project to equip stakeholder groups with the necessary understanding and skills on competition, C-CIER had earlier organised a workshop with the staff of the Vietnam Competition Administration Department (VCAD) on April 25-26, 2005.

Realising the need for a follow-up, and motivated by the requests from the VCAD, C-CIER decided to organise another training workshop.

The first in the series of the events that C-CIER had organised in Vietnam was a two-day *training workshop on mergers & acquisitions (M&As) investigative skills* for the Vietnam competition officials, on August 13-14, 2005.

Seven international experts from the competition and M&As investigation discipline were invited as resource persons for the training sessions. There were about 30 participants from the Vietnamese Ministry of Trade. The sessions were useful in accentuating the need for enforcement of the newly enacted Competition Law 2004, of Vietnam. The sessions were designed as a blend of theoretical analyses and hypothetical case studies, and drew upon the varied experiences of the experts.

Consumer Representatives Workshop

On August 22-23, 2005 C-CIER, in collaboration with the Vietnam Standard and Consumer Association (VINASTAS), organised a *workshop* to help *Vietnamese consumer representatives* to complement the government's efforts to operationalise a competition regime. The idea was to sensitise representatives from consumer groups/NGOs/activists on competition policy and consumer protection, so that they could identify anticompetitive practices prevailing in the market, and seek their solution. About 30 participants, including officials from the VCAD attended the workshop.

For details about the project and to keep track of its progress, please visit www.cuts-international.org/7up2.htm. A bi-monthly e-newsletter of the project can be received by sending an email to: 7up2@cuts-international.org.

Developing Competition Awareness among Key Stakeholders in Africa

National Consultation Meetings

Following the official launch of the 7Up3 project in March 2005, a series of national consultation meetings under a National Reference Group (NRG) were planned in the project countries to sensitise stakeholders of the need for a functional competition regime. Further, it was expected that these consultations would provide an opportunity to associate various 'key' stakeholders in the implementation process of the project.

The first round of national consultation meetings were held with the purpose of establishing a 'core group' of key stakeholders. These meetings aimed at making them aware of the objectives and anticipated outcomes of the project, of clarifying their role in the project, sensitising them on the subject and creating a method of periodical consultation for inputs to the research process and advocacy methodology.

The following important points emerged from these meetings:

- There was a need to make stakeholders comprehend the relationship between competition policy and consumer protection – i.e., how an effective competition policy could lead to consumer protection
- A need was felt to engage with the NRG members continuously. This would help in enhancing their awareness on the subject, and also keep their interest alive to associate readily with the project
- A need was felt by the members of the NRG to look at competition (or its restriction) in specific sectors of the economy, with greater details
- Ways of ensuring independence of the competition authority
- Many people felt that an effective dialogue between the civil society and the competition authority should be established, to move the competition agenda forward in the project countries

- The print media in most of the project countries was keen to develop understanding for analysing competition issues and reporting them through the columns of their newspapers

The implementation process ran into a bit of a problem in Mozambique, with the partner organisation selected for implementing the project, unable to deliver the preliminary paper in time to organise the first national consultation in the country. Realising the inability of the selected partner to produce the project deliverables, an alternative partner was engaged for implementing the project in the country following discussions with various people in Mozambique during and after a visit by a representative of the CUTS Africa Resource Centre (CUTS-ARC) to Maputo, the capital. The Economic Justice Coalition has agreed to be the new partner for the 7Up3 project in Mozambique, and the project is expected to be brought back on track.

Keeping Abreast

Three volumes of the project e-newsletter, *7Update* has been prepared and disseminated to the project partners, donors, national reference group members, regional authority representatives, and other important people in the region. The latest issue of the e-newsletter and other project related details are available on the project web page: www.cuts-international.org/7up3.htm.

An e-discussion group (*7Up3 Forum*) has been formed to initiate discussions on competition policy and regulatory issues pertaining to the project countries and the region. All interested are welcome to join this forum, to be abreast with competition policy and regulatory news from eastern and southern Africa. No fee is charged for becoming a member. Just an e-mail to 7up3@cuts.org will be sufficient.

Comparative Study of Sectoral Regulation in Select Developing Countries

Understanding Regulatory Design, Processes and Institutions



CUTS C-CIER has initiated a study to assess regulatory regimes in select developing countries of Asia and Africa with support from the French international development agency, *Groupe Agence Française de Développement*.

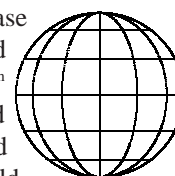
This study would provide an opportunity for establishing benchmarks relevant for developing countries in sectoral regulation, by looking at cross-country experiences in government policies and identifying sectors where regulatory functions are performed either by the government or specialised agencies. It would also analyse the regulatory framework with regards to institutional and governance aspects.

Cambodia, India, Indonesia, Kenya, South Africa, Vietnam and Zambia have been selected for this study. Seven country papers, and a comparative assessment in a synthesis report would be produced as outputs of this study.

(<http://www.cuts-international.org/sectoral-regulation.htm>)

Competition Regimes in the World – A Civil Society Report

C-CIER is preparing to release *Competition Regimes in the World – A Civil Society Report* at the 5th Review Conference of the United Nations Conference on Trade and Development (UNCTAD) to be held in Antalya, Turkey during November 14-18, 2005.



The prevailing competition regimes from 130-odd countries are sewed together in this unique compilation, which charts the evolution of competition policy in the world and suggests ways to strengthen competition regimes, as perceived by the civil society. Essays on the state of competition across the globe have been contributed by members of the International Network of Civil Society Organisation on Competition (INCSOC) and expert.

Health Sector Study

C-CIER is conducting a study on, "Options for using Competition Law/Policy Tools in dealing with anti-competitive practices in the pharmaceutical sector and health delivery system", in collaboration with the Ministry of Health and Family Welfare Government of India and the World Health Organisation. This is a six month project starting from August 16, 2005.

Objectives of the study are to:

1. identify competition concerns in the pharmaceutical sector and health delivery system
2. examine the scope of competition policy and law in dealing with such concerns, analyzing in the process, not just the Indian experience, but that of other countries as well
3. suggest an implementation strategy in using competition law/policy tools to enhance access to medicines and healthcare.

Events

CUTS' Retreat on Regulatory Framework

'Autonomy and Accountability are Inseparable'

The decade of nineties has seen a paradigm shift in the approach to economic management in India. Independent regulatory bodies have been (are being) established to perform functions hitherto performed by the line ministry and take decisions in a transparent and participatory manner.

However, experience shows there is lack of coherence in the regulatory framework, particularly on issues concerning regulator's autonomy and accountability that remain largely un-addressed.

To address this conundrum, C-CIER organised a three-session policy roundtable on May 7, July 23, and September 23, 2005 at New Delhi. Nearly 50 participants from the policy community including former judges, former and present regulators, government officials, media persons, civil society representatives participated in the discussions and contributed.



Key recommendations are:

- Sufficient provisions are required to ensure regulator's domain is not encroached upon by the line-ministry in the name of 'policy objectives'. The enabling legislation should clearly lay down objectives and boundaries of government's policy vis-à-vis regulatory function;
- A Parliamentary Committee on Regulation and

Competition should be established as the reporting authority for all regulatory agencies;

- A Committee of eminent persons should select regulators through a transparent process;

- A Common Appellant Tribunal for all regulators and the competition authority, with regional branches, would go a

long way to achieve effective and efficient dispute resolution;

These recommendations will soon be submitted to the Planning Commission as contribution to the policy paper that it has been working on to craft an appropriate regulatory framework for the infrastructure sector in India.

Advocacy

CUTS Facilitates a Parliamentarians' Forum on Economic Issues

CUTS is playing host to an initiative taken by five Members of Parliament (MPs) to established a forum of parliamentarians on economic issues. It will act as a common platform, where MPs, cutting across party lines, would be able to air their views on a periodical basis on core economic issues including trade, competition, regulatory reforms, investment and their cross linkages.

There has been an encouraging response from the MPs, who were invited to join this forum. This parliamentary forum is expected to be non-partisan and informal.

(<http://www.cuts-international.org/cutsinmedia2005.htm>)

Petro Subsidies – a flawed basis

CUTS criticised the Indian government for not being transparent in fixing petroleum prices, adding that the oil subsidy burden was exaggerated and there were distortions in the method of calculating liquefied petroleum gas (LPG) and kerosene subsidies.

At a consultation meeting organised by the Union Finance Ministry of India on May 31, 2005, it was asserted

that the huge subsidy burden on petroleum products and the notion of bleeding oil companies were a gross exaggeration, with most of the burden being passed on to the consumers. The meeting aimed to secure views from various stakeholders as inputs for preparing a roadmap for a new subsidy regime.

CUTS submitted a memorandum to the Finance Ministry on this issue.

(http://www.cuts-international.org/adv_PetroleumSubsidy.htm)

Food Subsidy Delivery Mechanism Questioned

CUTS has pointed out aberrations in the food subsidy policy of the government that has led to a ten-fold increase in the food subsidy bill since 1990-91. The policy entails two conflicting objectives of ensuring remunerative price to farmers and providing the food grains so procured to the poor at affordable prices.

In a note submitted to the government, CUTS critically reviews the policy options suggested in the report prepared by the Ministry of Finance on 'Central Government Subsidies'.

(http://www.cuts-international.org/adv_FoodSubsidy.htm)

Comments on TRAI's Consultation Papers

Code on Billing – a Welcome Move

The telecom regulatory framework in India does not provide for institutional mechanisms to address consumer grievances. If consumers are not satisfied with the service providers, there is no other institutional arrangement. Consumer court is often the last destination, where cases take their own time to get resolved. In this scenario, the initiative taken by the Telecom Regulatory Authority of India (TRAI) to establish 'Code of Practice in Billing Accuracy in India' has been welcomed by CUTS.

Number Portability to Enhance Competition

In most telecommunications services in India, subscribers have the option to choose from an array of mobile operators. However, the subscriber is unable to retain her/his telephone number when changing operators. TRAI is contemplating introducing number portability, which CUTS anticipates, would lead to better competition in the mobile telephone market, and result in better service quality.

Media Outreach

Fostering Greater Public Understanding on Competition in India

Competition Policy for 10% growth

In this article published in the Economic Times on June 16, 2005 Pradeep S Mehta, Secretary General of CUTS International argues that an effectively implemented competition regime has the potential to catalyse an annual growth rate of at least 10 percent in the country. A well-designed and implemented competition policy ensures better allocation of resources and proper functioning of markets. Inappropriate policies of the government, combined with anti-competitive business practices prevailing at the local and national levels, and regulatory failures hurt the economy. This article seeks the attention of the Prime Minister and senior policy makers for the country on the need for a competition policy.

Competition policy for 10% growth!

It's not enough to have a competition law, we need a competition policy. A competition audit of all new and old policies will certainly help the government promote competition, argues Pradeep S Mehta.



It echoes a consensus that seems to have emerged about separating the function of day-to-day regulation from policy formulation, and delegating specialised authorities with the responsibility to carry out the former function. Overlap between sectoral regulators and the competition authority is identified as an issue that has received divergent views from various quarters.

Defanging the Competition Act

Mehta, in this article in The Business Standard on August 1, 2005, comes down heavily on the proposed amendments to the Competition Act of India 2002. It explores how the amendments would remove the sting from the Competition Commission of India rendering it a toothless investigating and market

Defanging the Competition Act

The Competition Commission of India (CCI) is being defanged by the proposed amendments to the Competition Act of India 2002. This article explores how the amendments would remove the sting from the CCI rendering it a toothless investigating and market

Fitter referees for a competitive economy

We appear to be inching towards consensus on a more effective regulatory framework.



Fitter Referees for a competitive economy

Published in The Financial Express jointly by Mehta and Vinayak R Pandey, Assistant Policy Analyst at CUTS on June 25, 2005 this article analyses the debate on the need for independent regulators for various sectors in the economy.

research agency. The Commission would once again become a parking lot for retired bureaucrats, who would be appointed through the usual non-transparent process to head the institution.

(<http://www.cuts-international.org/articles2005.htm>)

Representation

Competition Advocacy Seminar, May 19, 2005

Manish Agarwal, Policy Analyst at CUTS C-CIER participated in an advocacy seminar organised by the Competition Commission of India (CCI) for sensitising state government officials on the subject. Lawyers, central government and regulatory authority officials, academicians, and consumer organisation representatives participated in this seminar.

Annual Conference of the International Competition Network, June 5-8, 2005

Pradeep S Mehta participated in the 4th Annual Conference of the International Competition Network (ICN) organised in Bonn, Germany. He was the only representative from India, as the competition authority officials could not make it to this global event, where an august gathering of top competition experts and practitioners from around the world discussed emergent issues in the field of competition policy and law.

Seminar on Trade and Industry, August 17, 2005

Manish Agarwal participated in a consultation seminar on trade and industry with policymakers and stakeholders organised jointly by the Indian Council for Research on International Economic Relations (ICRIER), Indian Institute of Management (IIM), Bangalore, Asian Development Bank (ADB) and the Ministry of Finance, Government of India in New Delhi. The purpose of this meeting was to discuss trade policy and industrial reforms policy papers and seek comments.