

C-CIER ACTIVITIES REPORT



Competition Issues in the Market on Farm Goods

From the Rural Poor to Luxurious Supermarkets: Who Profits?

A handful of powerful multinational companies, acting as intermediaries, control most of the capital resources and therefore, dominate all institutions (markets, regulations, standards).

CUTS organised a seminar for debate on the above-mentioned issue as a part of The International Centre for Trade and Sustainable Development's (ICTSD's) Hong Kong Trade and Development Symposium, held during the Sixth WTO Ministerial. The event organised in collaboration with the Institute for Agriculture and Trade Policy (IATP, US) and Consumers International (CI) was held on December 17, 2005.

The main objective of the seminar was to highlight the impact of restricted competition for agricultural commodities in the global market *vis-à-vis* poor producers and consumers in developing economies. There exists a certain power asymmetry in the global supply chains for agricultural products. During the discussion, efforts were made to examine the current legal and regulatory frameworks.

CUTS had prepared a policy brief on the subject, with inputs from various researchers from Asia and Africa.

Indah Suksmaningsih, chairperson of the Yayasan Lembaga Konsumen Indonesia (YLKI), made a brief

presentation on the present scenario in the sugar sector of the country. The sector has undergone a massive restructuring in the last 10 years, which has affected both the producers and the consumers.

Sophia Murphy, director, Trade Programme, IATP (US), highlighted the need for competition rules to regulate trade internationally, and make sure that the benefits are spread more evenly. She further observed that the situation in developing countries is much more sensitive. She opined that it was very important to give developing countries the policy space to craft their own developmental plans on agricultural cultivation, production, and marketing, and to develop a regulatory system that pays attention to the interests of all the parts in the supply chain.

(cuts-international.org/cuts-hk-eventsreport.htm)



CIRC Academic Lecture Series



Capacity Building on Competition Policy with Special Reference to India

CUTS Institute for Regulation and Competition (CIRC) has been established by CUTS to act as a specialised training facility to enhance competition administration and develop regulatory regimes, especially in keeping in mind 'Southern needs'. CIRC organised a public lecture on January 18, 2006, at the India International Centre, New Delhi. Prof. Eleanor Fox, Walter J. Derenberg Professor at New York University School of Law of the US, delivered this public lecture highlighting the issue of capacity building on competition policy, with special reference to India. This was the first in the series of lectures, which would be periodically organised by the institute.

Prof. Fox said that India should have an effective Competition Law in place as an important ingredient of the reforms process. This should be

backed by a suitable regulatory mechanism that provides the will and ability to protect competition and stand

up to myriad pressures. Prof Fox said that the intervention of government in competition is the most accepted norm across the globe so long as consumer interest is preserved. There are indications that even the European Union (EU) is fast moving towards this concept.

As competitors join hands to rule the market, price fixing and production limiting cartels are regarded as clear violations of the law and must be stopped. Talking about India, the veteran scholar said that careful choices must be made to identify cartels and action should be taken against them, she asserted.

Dr C Rangarajan, Chairman, Economic Advisory Council to the Prime Minister of India, and Chairperson of the Governing Council of CIRC, chaired the occasion. He observed that for the last four decades, 'market' has been a dirty word. "But things are changing and there is a remarkable difference since the liberalisation move that started in the 1990s. Competition Law and a suitable regulatory mechanism have become imperative because in their absence, mergers and acquisitions can result in monopoly".

(www.circ.in)



(From L-R) Pradeep S Mehta, Dr C Rangarajan & Prof Eleanor Fox at the CIRC public lecture, New Delhi, January 18, 2006

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

With the research phase of the project over, the project co-ordination and management unit is putting a lot of emphasis on project outreach activities, including dialogues on competition policy issues, training workshops, etc., at the national level in all the project countries. Country reports from Bangladesh, Cambodia, Lao PDR, Nepal, and Vietnam have been completed and would soon be printed and extensively disseminated. A ‘Synthesis Paper’, collating the findings from the research undertaken would also be prepared. The final meeting for the 7Up2 project is being planned in June 2006 in Bangkok, Thailand.

CUTS is also planning to organise a conference of International Network of Civil Society Organisation on Competition (INCSOC) members from Asia, on the day following the 7Up2 final meeting. Select Asian members of the INCSOC network would be invited for this conference to debate on the theme of ‘Strengthening Competition Regimes in Developing Countries’, with a specific emphasis on how to enhance civil society participation in competition outreach and advocacy in the developing countries of Asia. (www.incsoc.net)

Bangladesh Policy Dialogue

A policy dialogue was held on the competition scenario in Bangladesh in the capital Dhaka on January 2, 2006. Unnayan Shamannay organised the dialogue in collaboration with Bangladesh Enterprise Institute and CUTS International. Several MPs and government officials took part in the policy dialogue.

Iftekar Ahmed, Senior Research Fellow of BEI, Bangladesh made a presentation of the findings from the research on competition in the country. In another session, the participants were sub-divided into two groups: parliamentarians and government officials. Parallel discussions were held. The discussions revealed that the absence of a proper regulatory framework in the country and an ineffectual judiciary were some of the reasons behind the restriction of competition at various levels in the market.

Training Seminar on ‘Abuse of Dominance’ in Vietnam

CUTS organised a training workshop on ‘Abuse of Dominance’ for competition



Workshop on Abuse of Dominance, Quang Binh, Vietnam, January 12-13, 2006

authority officials from Cambodia, Lao PDR, and Vietnam in Quang Binh, Vietnam, from January 12-13, 2006.

Apart from a presentation by representatives from the Vietnam Competition Administration Department (VCAD), CUTS had invited practitioners from the Korean Fair Trade Commission, the Taiwan Fair Trade Commission, and a competition consultant from the UK as resource people.

The workshop dealt with technical issues like the definition of relevant markets, detection of abuse of dominance, abuse of dominance in hi-tech markets and network industries, etc. Group exercises were organised in order that the participants are enable to apply them appropriately to practical situations.

(cuts-international.org/7Up2.htm)

Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa (7Up3 Project)

Project partners are finalising the first draft of the Country Research Reports (CRRs). A detailed assessment of the competition regime of each project country is presented in the CRR. Additionally, one section of the CRR has attempted to capture public perception on the benefits of a competition regime in each of the project countries. It has also tried to highlight the level of awareness on competition policy and law issues among three stakeholder groups – business community, government and civil society.

Once ready, the CRRs would be presented to a group of national stakeholders – the National Reference Group (NRG) in each project country in the second round of the NRG meetings, to be held in the month of February 2006.

A Regional Conference of the 7Up3 project would be organised in Addis Ababa from March 27-28, 2006. The Regional Conference would provide an opportunity to share the findings from the research undertaken in each of the project countries with various stakeholders both within the region and at the international level, viz. the regional authorities, donors, intergovernmental organisations, civil society organisations, and other key stakeholders. Detailed research reports on the competition scenario in each of the seven project countries would be presented. This in turn would help develop a regional perspective on competition policy and law in eastern and southern Africa.

(cuts-international.org/7Up3.htm)

Advocacy

Parliamentarians Debate Economic Issues in Forum Hosted by CUTS

11 MPs launched the Parliamentarians' Forum on Economic Policy Issues (PAR-FORE) at a meeting organised by CUTS on December 7, 2005. The issue of *Regulatory Autonomy and Accountability* was discussed in this meeting.

Regulatory Autonomy and Accountability

"Addressing the gaps in the regulatory framework in India is badly required, and the papers produced by CUTS will help spur a good discourse", said Sharad Joshi, Swatantra Bharat Party's MP. "My worry is that all new regulatory bills provide a regulatory authority, which are going to be manned by retired bureaucrats. It appears that the bills are being drafted to find jobs for civil servants after their superannuation, rather than addressing the core concerns of the law", he added.

Marxist MP, Manoj Bhattacharya, said: "Increasingly, we are having more non-regulated sectors in India, while the

imperative is to create and place sound regulators in the best interest of the people". He felt that the government is inclined towards a neo-liberal approach to economic management, which was not desirable.

Amendments to the Indian Competition Act 2002

Members of the Forum meet on February 22, 2006 to discuss pertinent aspects on the proposed amendments to the Competition Act 2002.

This meeting, to be convened in New Delhi, in the middle of the 'budget session' of the Parliament (when the amendments of the Competition Act 2002 are expected to be tabled and debated in the Parliament), would evaluate the pros and cons of the proposed amendments to the Competition Act 2002.

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

Success at the Hong Kong Ministerial – a Welcome Relief (De-briefing of the Hong Kong Ministerial, December 21, 2006)

The Sixth WTO Ministerial conference held recently at Hong Kong did not break down. This in itself is a success. A second failure after the Cancun fiasco would have been really disastrous for the multilateral trading system, and would have affected the developing world, adversely.

This opinion came out at the second PAR-FORE meeting on December 21, 2005.

"India through its liberalisation is moving forward. Our average tariffs came down to 20 percent. However, it is feared that this autonomous liberalisation will weaken our negotiating position in the WTO", observed Yashwant Sinha, former External Affairs Minister and a Rajya Sabha member.

Speaking at the Forum, former Maharashtra Governor and an independent Rajya Sabha M.P. Dr. P. C. Alexander expressed his fears that duty and quota free market access to Least Developed Countries was another cause for concern.



PAR-FORE meeting, New Delhi, December 7, 2005

Government Gears up for a National Competition Policy

CUTS has been lobbying for a comprehensive competition policy at the national level, with the government. This emerged as a recommendation from CUTS on competition scenario in India.

The government recently directed the Competition Commission of India (CCI), the competition authority, to form an 'Advisory Committee' for developing a consultation paper on the National Competition Policy for India. Pradeep S Mehta, Secretary General of CUTS International has been invited to join this advisory committee as a member.

Media Outreach

New Foodgrain Procurement System Mooted

The Hindu on January 29, 2006

In a pre-budget memorandum submitted to the Finance Minister, P. Chidambaram, CUTS has suggested that procurement of foods for distribution through the public distribution system be separated from the price support to farmers through the minimum support price.

Consolidation in the Air

The Hindu Business Line on January 20, 2006

The buyout of Sahara Airlines by Jet Airways signifies the beginning of a consolidation phase in the country's domestic aviation industry. For passengers, everything

seemed to run their way. But when free markets let in new producers or service providers, they also offer opportunities for consolidation.

Overhaul Prevailing Tax Structure to Rationalise Prices on Petroleum Products

The Western Times on January 21, 2006

CUTS has called for rationalisation of taxes on petroleum products in the forthcoming budget in order to bring down inflation.

More than half of the retail-selling price of petrol and one third of the selling price of diesel is made up of central and state duties. By imposing high taxes and duties on petro products, government is actually fuelling inflation.

Competition Law for Developing Countries – Substantive Law

Workshop conducted by Prof Eleanor Fox and Nitya Nanda on January 26, 2006

Prof Fox started with pointing out that the fact that competition laws need to be tailored to developing country needs is accepted, but what exactly are the differences that need special attention, is seldom articulated. This discussion was opportune at a time when the US and EU – the two jurisdictions that set the standards – are on their way to amending their laws. The US law is very non-interventionist in its approach, whereas, the EU law, often seen as an alternative, is also moving towards a *laissez faire* approach. The ghost of the Washington Consensus lingers on, still.

Nitya Nanda, Policy Analyst, C-CIER, discussed the evolution of competition laws in developed countries to be able to see what process developing countries should adopt, and with what inspirations and expectations. He then touched upon some of the specific characteristics of developing countries – socio-economic, legal – that preclude the direct acceptance of developed country laws. What should the exemptions be, if any? Where does one draw the line between entrepreneurs and livelihood earners?

The lucid presentations stoked the interest of the participants. The ideological leanings of those drafting the laws in developing countries of course matter, but other influencing factors are laws proposed as models, in the form of codes or guidelines. The OECD and the UNCTAD model laws appear as two important names in the area, though it also came out that they are now obsolete. It appears to be close to impossible today, to amend or completely redo them, with fresh consensus.

To get a hold of the picture on the ground, there was some discussion on the two issues making headlines in India currently – Jet's acquisition of Air Sahara and FDI in retail. Though there was some disagreement on whether or not the Jet-Sahara deal would raise competition concerns, there was unanimity on the suggestion that the deal must be critically assessed by the appropriate authority. On the issue of allowing FDI in retail, there was dynamic discussion. This helped the participants zero in on the real issues that need attention when structuring competition laws in developing countries. The questions of fairness, efficiency and relative focus on either, brought out many ideas. But there was only agreement that each country needs to answer these questions in its own context and share experiences through debate and dialogue.

It was accepted that the high degree of informality in these economies precludes effective implementation of laws. An acceptance of the existence of the unorganised sector is vital for any law to be applicable. The development

objectives of these countries also need to be set out on priority. Some basic provisions like health and education cannot be handed over to competitive markets.

With the preliminary thoughts and ideas that have come up from this discussion and from further research and dialogue, CUTS intends to take up the task of structuring a model law that any developing country may consult in making its own competition law. This model would take into account all the basic characteristics that most developing countries share – predominance of agriculture, small scale enterprise, limited basic facilities, high service component, relations with developed world in terms of trade, patents, among others. This workshop was intended to be the first step in the right direction. *(Please e-mail your comments to c-cier@cuts.org)*

First Training Seminar on Competition Policy and Law March 20-24, 2006, New Delhi (India)

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Over the last few years several developing countries have adopted a competition law, or made substantial amendments to the existing one as a part of their economic reforms. However, proper implementation remains a major challenge.

It is important that different stakeholders understand the relevant issues better, to facilitate the process.

Considering this, CUTS Institute of Regulation and Competition (CIRC), is offering a five-day training seminar on Competition Policy and Law, which would be useful for all these groups. The seminar would be useful for – business and industry, lawyers and academics, NGOs and government agencies.

The course would cover the following:

- Competition Law and Policy: Rationale and Objectives
- The Firm and the Basic Concepts of Market
- The Practice of Competition Law and Policy Implementation Issues Including Legal Issues
- Restrictive Practices – Horizontal and Vertical
- Dominance and Market Power
- Mergers and Acquisitions
- Cross-border Competition Concerns
- National and Regional Competition Policy
- Competition Law in Developed and Developing Countries
- Competition Policy and Service Industries
- Interface between Competition Policy and Regulation

Representation

- Pradeep S Mehta, Secretary General, CUTS, participated in the Sixth Ministerial of the WTO Hong Kong from December 13-18, 2005.
- Mehta and Manish Agarwal, Policy Analyst, C-CIER attended a seminar, organised by FICCI and Shriram Centre, at New Delhi to discuss Jagdish Bhagwati's book, entitled, 'In Defence of Globalisation', on January 18, 2006.
- Vinayak R Pandey participated in a meeting organised by Telecom Regulatory Authority of India on January 24, 2006 in New Delhi to review implementation on the Consumer Charter that telecom service providers had adopted in 2005.