

C-CIER ACTIVITIES REPORT



Advocacy and Capacity Building on Competition Policy and Law in Asia

Project Final Meeting, Bangkok, June 27-28, 2006



A two-day meeting organised in the Thai capital by CUTS International marked the conclusion of the project entitled, 'Advocacy and Capacity Building on Competition Policy and Law in Asia' (7Up2 Project) (www.cuts-international.org/7up2.htm).

It emerged from the deliberations that in most Asian countries there is no comprehensive legislation to promote fair competition; and where the law does exist, implementation is not taken seriously. This makes the business environment less conducive to small and new enterprises and big companies often with political nexus rip off consumers.

Speaking at the conference, Philippe Brusick, Head, Competition and Consumer Policies Branch of United Nations Conference on Trade and Development (UNCTAD), Geneva said that promotion of fair trade rules is essential for promoting growth with equity. Douglas Brooks of the Asian Development Bank Institute, Tokyo emphasised the fact that in a globalised environment, the absence of competition rules can be damaging local business as well as consumers. Marc Proksch of the United Nations Economic and Social

Commission for Asia and the Pacific (UNESCAP) spoke of the need for Asian economies to promote competition at the domestic level in order to be globally competitive.



Participants during a discussion at Bangkok

Referring to the general opposition of the business community to the adoption and implementation of competition law, Pradeep S Mehta, Secretary General of CUTS International pointed out that even business has an important stake in creating a competitive environment.

Detailed research had been carried out in the project countries alongside organising training programmes for the competition authority officials and representatives of other stakeholder groups.

Apart from the project partners representing leading civil society organisations, research institutions and consumer associations from the six project countries, the meeting also drew renowned experts on competition, representatives of inter-governmental organisations, and competition authorities, from within the region and outside.

Check: www.cuts-international.org/7up2.htm for detailed information on the project

INCSOC Third Annual Conference



The third annual conference of INCSOC members was held between June 29 – July 01, 2006, when Asian members of the coalition met in Bangkok, Thailand. The agenda of the meeting was dedicated to address the *issue of continuous capacity building of members* of the network. To this end, a formal training on competition policy and law was organised in collaboration with CIRC, FEMAG (Australia), BOT (Thailand) and JFCC (Thailand).

The objectives of the training were to:

- Develop analytical capacities of members to comprehend Competition Law related issues;
- Develop an understanding on compliance and procedural issues; and
- Make members understand the expected role of different stakeholders and groups in order to ensure competitiveness of markets and accelerate economic growth.

The topics covered included:

- Competition Law and Policy: Rationale and Objectives
- Introduction to Competition Analysis
- M&A Regulation in Competition Law; Types of Mergers; Efficiency Gains vs. Market Power; Merger Impact Assessment.
- Dominance and Market Power
- Restrictive Practices (horizontal and vertical arrangements) and Restrictive Practices Assessment
- Competition Law and Sectoral Regulation
- Cross Border Competition Concerns, Jurisdictional Issues (national and regional competition policy)
- Competition Law & IPRs
- Case Studies (e.g., merger impact assessment, abuse of dominance, restrictive practice assessment)

Resource persons from both developed and developing countries shared their experience with the trainees through case studies, which were well received.

Civil Society Participation in Evolving a Functional Competition Regime – How to Proceed in Africa

CUTS International facilitates civil society actions for initiating research and advocacy activities on competition policy and law in several parts of the developing world, especially in Africa and Asia. CUTS Centre for Competition, Investment & Economic Regulation (CUTS-CCIER), a programme centre of CUTS International, has been actively involved in implementing research projects for developing better understanding on national competition regimes in various countries, with the cooperation of local partners (research institutions, NGOs, consumer associations, University Departments, etc.) in South and Southeast Asia and Eastern and Southern Africa.

On the sidelines of the International Competition Network (ICN) Fifth Annual Conference, held from May 3-5, 2006 in Cape Town, South Africa, CUTS C-CCIER organised a roundtable to discuss and deliberate – Why civil society needs to take active part and play a pro-active role in

competition awareness and education? What are the available options for civil society to engage on competition research and advocacy, especially in Africa?



CUTS' publications on display at Cape Town

There was consensus over the discourse that civil society organisations (CSOs) in the continent were fairly capable of undertaking research and advocacy activities on competition policy and law issues, and required only a little guidance from an agency/organisation that had the experience to implement such endeavours. Further, it was acknowledged by all that in order to develop a wider public understanding (of multiple stakeholders) on competition across the continent, it was necessary for CSOs to engage actively. In this regard, it was imperative for competition authorities and donors to support civil society interventions to facilitate the process.

Outcomes of the roundtable is available at: [http://www.cuts-international.org/7up3/Roundtable_C_Town\(f\).doc](http://www.cuts-international.org/7up3/Roundtable_C_Town(f).doc)

India Competition and Regulation Report (ICRR)



CUTS C-CCIER has undertaken a project to develop a biennial "India Competition and Regulation Report" (ICRR). While India has embraced market-oriented economic reforms, there is, as yet, no periodic review to assess functioning of markets in the country. This is desirable given the existence of distortions in economic management that impede realisation of competitive outcomes. Considering the important role of market forces in a liberalised economic regime, there is a need to do periodic assessment of competition and regulation scenario in the country. ICRR is expected to achieve this.

The objectives of the ICRR would therefore be to:

- Serve as an important tool for doing an independent monitoring and evaluation of competition and regulation scenario in the country,
- Provide comprehensive and contemporary assessment of the state of competition and regulation in India,
- Provide necessary inputs to Government (Central as well as States), Competition Commission of India (CCI), sectoral regulatory authorities, other governmental agencies, civil society organisations, business, academia, media, professionals, etc; and
- Serve as a useful source of data and well-researched information on competition and regulatory issues in the country.

The ICRR would also encompass:

- Various policies/practices of Government (Central as well as States) in terms of their impact on competition,

- Working of the Competition Act and sectoral regulatory legislations,
- Competition issues in regulated sectors and competitive sectors, and
- Impact of competition on various stakeholders (in particular, consumers and business)

The activities of the ICRR would be guided by a National Reference Group (NRG) comprising of eminent experts and policy makers.

Major activities under the project would include preparing the India Competition & Regulation Report (ICRR), 07; computation of India Competition Perception Index; organising national Seminar in Delhi for public release of ICRR, 07; developing policy briefs (summary of ICRR findings and recommendations) for reaching out to stakeholders. Meeting of a Parliamentarians' Forum hosted by CUTS would be held in Delhi to discuss key findings of ICRR,07

The project would provide inputs on a periodic basis to policy community as well as other stakeholders for taking necessary actions to promote well-functioning markets. The British High Commission, New Delhi, India, is supporting the project. First issue of the *India Competition and Regulation Report* would be released in June 2007.

Details are available on the project webpage: <http://www.cuts-international.org/icrr.htm>

Competition Regimes in the World

– A Civil Society Report



Competition is a process of economic rivalry between market players to attract customers. These market players can be multinational or domestic companies, wholesalers, retailers, or even the neighbourhood shopkeeper. In their pursuit to outdo rival enterprises, market players either adopt fair means or indulge in unfair measures.

In the interest of consumers and the economy, it is necessary to promote an environment that would facilitate competitive outcomes in the market, and curb anti-competitive behaviour by the players. In other words, it is essential to evolve a 'level playing field' by putting in place appropriate policies and legislations to ensure competition in the marketplace for the benefit of the economy and consumers.

More and more countries are waking up to the reality that a competition law is not a luxury but a necessity in the current context of liberalisation and privatisation of the economies happening throughout the world, especially in the developing world. It is, therefore, no surprise that more and more countries are embracing competition laws, while many are adopting new laws after scrapping old ones.

In the beginning of 1990, there were about 30 countries with a competition law, while presently the number has raced to exceed 100, with quite a few in the process of adopting a competition legislation very soon.

'Competition Regimes in the World: A Civil Society Report' is an attempt to map out competition regimes around the world and covers 119 countries. Most of the countries covered in this volume have a competition legislation, while some are in the process of adopting one. The report also carries a brief description of the regulatory regime and the consumer protection framework of each country. Each of the chapters are illustrated with box stories on competition cases, which offer good insight.

Overall, the country papers in the compilation provide a glimpse of the competition scenario in the selected countries in a simple language, and exhibit information under the following broad categories:

- Basic introduction and country profile;
- Economic background;
- Genesis and environment of competition regime;
- Competition law and institutions;
- Examples of anticompetitive business practices;
- Sectoral regulatory regime;
- Consumer protection framework; and
- Future scenario.

This report contains essays on the countries by a large number of activists, scholars, experts and practitioners, whose names appear as authors in the corresponding chapters.

The final version of this report was released by CUTS in June 2006, and is an improvement over the advance copy that was released at the UN Conference on Competition Policy in November, 2005 in Antalya (Turkey).

The competition community across the globe has lauded this report, which experts observe would soon become one of the most referred book in competition literature.

Policy-makers, academia, civil society and the business community are encouraged to get their copies by visiting www.competitionregimes.com

Advocacy

The Planning Commission of India has appointed Pradeep Mehta, Secretary General, CUTS International, as a member of the newly formed Working Groups on Consumer Protection and on Competition Policy.

While, the former group would recommend comprehensive set of policies, programme and action plan to launch a strong paradigm for consumer protection, the latter would primarily recommend a set of comprehensive policy instruments and strategic interventions to effectively generate a culture of competition to enhance competition in the domestic market with the involvement of all stakeholders.

More on: www.cuts-international.org/news-cutsJune06.htm#psm24june06

Working Group on Competition Policy

The working group has been formed to recommend policy instruments and strategic interventions to generate a culture of competition in the domestic market. Participatory involvement of diverse stakeholders would enhance the process of pro-competition policy making.

Among other issues, the working group would advise on effective and workable institutional mechanism for synergised relationship between sectoral regulators and Competition Commission of India (CCI). CUTS is sharing its expertise on competition policy and law with members of this group and trying to bring in lessons from other developing countries which would be relevant and useful.

Working Group on Consumer Protection

The working group would recommend a comprehensive set of action plans to operationalise consumer protection in the country. It would further suggest ways and means to enhance responsiveness of private sector to consumers.

The working group would assess resource requirements and manner of financing including PPP models in the Eleventh Five Year Plan. The first meeting of the Working Group on Consumer Protection was held on July 13, 2006.

How to Enhance Growth and Competitiveness

Pradeep S Mehta, *The Hindu Business Line*, April 12, 2006

To achieve the much talked about GDP growth rate of 9 – 10 percent, equal emphasis must be given to the “software” component of economic management such as policies and practices of the government which shape the general economic environment.

Even after liberalisation, government policies continue to be framed and implemented such that they thwart the market process and competition.

What is required is the need to frame and implement policies in harmony with the market process and not in a manner that stalls it.

Government must adopt a National Competition Policy as the mantra for implementing economic reforms in the country. Only then will a 10 percent growth be possible.

Hauling up Cement and Oil Cartels

Pradeep S Mehta, *The Economic Times*, May 23, 2006

Like most jurisdictions, the new competition law in India has provisions for extra territorial jurisdiction, and it too can take on abusive cartel behaviour abroad.

Of late, both cement and oil prices have been going north. World over, cement cartels have been hauled up and penalised where ever an effective competition regime exists.

Once our new competition regime becomes a reality, it could be expected to deal with the cement and hundreds of other cartels, but expecting it to deal with oil export cartel is remote.

People ask in absolute puzzlement about the Opec cartel and why governments cannot take action against it. The stock answer is that it is a sovereign act of governments and therefore another government cannot take action.

If most competition laws do not exempt government businesses from their purview, there is no reason for competition authorities anywhere to not able to sue oil companies abroad.

Amend the Post Office Amendment Bill

Pradeep S Mehta, *The Financial Express*, May 17, 2006

Pursuant to the proposed amendments to the more than a century old Indian Post Office Act (1898), the debate has focused primarily on whether the Department of Post (DoP) should have monopoly to carry all letters weighing less than 300 grams; second, who ought to bear the burden of financing Universal Service Obligation (USO); and third, setting up of a postal regulator.

The strategy to attain government’s objective to serve rural and remote areas via the proposed amendments is a retrograde measure. In the current scenario when there is already segmentation of the market for postal services (ordinary mail vs express), the government should seek to preserve this, rather than create further segmentation.

Moreover, does the government have the ability to utilise USO funds properly? With a nationwide network, DoP already enjoys an advantageous position. What it requires is a bit of imagination to reinvent itself and develop new niches.

Reforms Need a Competition Policy Framework

Pradeep S Mehta, *The Hindu Business Line*, June 6, 2006

Often policies are designed in such a way that they stall the market process or promote the welfare of some market players, which is indicative of economic reforms and liberalisation process being under severe test. There are other indicators too that highlight the policy vacuum in an era of economic reforms.

It is therefore, time the government adopted a National Competition Policy as the mantra for implementing economic reforms. The policy could spell out competition principles to guide the government for integrating a competition dimension in all public policies.

Violation of the competition principles exists in several measures adopted by the government at all levels. It is imperative that the government adopts these principles to complete and enhance the process of economic reforms.

Representation

Sajeev Nair, Regional Adviser, and Rijit Sengupta, Programme Officer, represented CUTS in the Fifth Annual Conference of the International Competition Network (ICN) held from May 3-5, 2006, in Cape Town, South Africa.

CUTS announced the release of the ‘Final Version’ of its book ‘Competition Regimes in the World – A Civil Society Report’ during the conference and also organised a roundtable, ‘Civil Society Participation in Evolving a Functional Competition Regime – How to Proceed in Africa’.

Pradeep S Mehta attended the sub-committee meeting of the Advisory Committee on National Competition Policy of Competition Commission of India (CCI) at New Delhi, on June 05, 2006. Mehta attended the ADB Competition Law and Policy Roundtable at New Delhi, on May 16, 2006.

Pradeep S Mehta and KC Sharma of CUTS International attended a one-day seminar on ‘Critical Issues of Investment in Rajasthan’, in the context of the Eleventh Five-Year Plan, organised by the Planning Commission, New Delhi, in collaboration with the Institute of Development Studies (IDS), at Jaipur, on April 12, 2006.